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PROCEEDINGS AND DEBATES OF THE 92^d CONGRESS, SECOND SESSION

SENATE—Wednesday, March 22, 1972

The Senate met at 9:30 a.m., and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

PRAYER

The Reverend Andrew L. Johnson, Tuskegee Institute, Tuskegee, Ala., offered the following prayer:

O Thou Master of space, time, and eternity, we pray Thy blessings upon this session of our Nation's highest legislative body.

We thank Thee for the record of service to our Nation that it has compiled through the years, and we pray that each Member of the U.S. Senate might be so touched by Thy Holy Spirit that he might look with new eyes upon the critical needs of our Nation and our world.

Grant them the insight, the comprehension, the empathy, the compassion, and the resolution to make a constructive contribution to the solving of the problems, and in establishing the structure that will promote peace among all nations.

May this august body so plan and work that our culture and civilization will move toward the implementation of the visions of the ancient prophet:

"And they shall beat their swords into plowshares and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more. They shall sit every man under his vine, and under his fig tree, and none shall make them afraid."

We thank Thee for our illustrious past which is our teacher, our arduous present which is our challenge, and our inscrutable future which is our hope.

In Thy holy name we pray. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

Washington, D.C., March 22, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. ALLEN thereupon took the chair as Acting President pro tempore.

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THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, March 21, 1972, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the Chair recognizes the distinguished Senator from Delaware (Mr. ROTH) for not to exceed 15 minutes.

(The remarks Mr. ROTH made when he submitted an amendment to H.R. 1, the Social Security Amendments of 1972, are printed in the section of the Record devoted to the transaction of routine morning business under the appropriate heading.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore (Mr. ALLEN). At this time, in accordance with the previous order, the Chair recognizes the distinguished Senator from New York (Mr. BUCKLEY) for not to exceed 15 minutes.

THE SITUATION IN CAMBODIA

Mr. BUCKLEY. Mr. President, the day before yesterday the armed forces of North Vietnam subjected the capital of Cambodia to the heaviest rocket and mortar bombardment yet delivered on any major city in the Indochinese war. This was Hanoi's latest, most spectacular act of aggression against a people whose only sin has been to attempt to deny the use of their seaports and territories as supply and staging bases for military assaults on a neighbor.

Although it is perhaps too much to hope, perhaps the sheer size and brutality of the attack will shock some of our self-styled leaders of opinion into a better understanding of what is happening in Indochina today. What we are witnessing is the reality of a state of war which has been imposed by the North Vietnamese on a people who want

nothing so much as to be allowed to go about their daily lives in peace; a people who seek peace, but not at the sacrifice of their independence; a people who have already demonstrated an extraordinary tenacity and courage in their own defense.

I was in Cambodia just 2 months ago, and was able to observe firsthand, the efforts being made by the Cambodians to build up their own defenses despite their lack of the most rudimentary tools of war. I recall visiting the town of Kampong Cham in northeastern Cambodia, less than 2 miles across the Mekong River from the Chupp rubber plantation, then harboring two seasoned North Vietnamese divisions. I saw there a home defense brigade manned by a ragtag, but determined group of teenagers equipped with an assortment of small arms scavenged from the landscape—five different kinds of rifles of various vintage and of Chinese, European, and American manufacture, to be exact. The Cambodians have shown time and again that they have the will to defend themselves, but it is clear that they cannot hope to succeed without the arms with which to match the increasingly sophisticated weapons with which the Chinese Communists and the Soviet Union continue to supply their enemy.

This small country is a testing ground for the doctrine which the President announced at Guam in 1969 as an alternative to the direct involvement by American forces in future wars in Asia. "Cambodia is the Nixon doctrine in its purest form," the President stated recently. Yet, the significance of what is happening in Cambodia today, and by extension elsewhere in Indochina, seems lost on far too many Americans. This innocence, or ignorance, has nowhere been better exemplified than in an editorial which appeared in the New York Times on March 15. After referring to Cambodia as a "miserable Southeast Asian land," the editorial recommends in effect that the Congress scuttle the administration's proposal to provide its people with the basic military tools which are essential to their national survival.

If the New York Times editorial merely represented another example of the routine cultural sense of superiority which is exhibited by so many Americans who do not understand or care to understand Asia, it could simply be overlooked. But it cannot be overlooked because too many abroad are apt to take the Times' pronouncements seriously. One is tempted for example to ask whether the March 15 editorial had been read by the North Vietnamese commanders before they

ordered the attack on Phnom Penh. It cannot be overlooked, because on too many occasions the Times has had its impact on domestic attitudes, witness the classic example of Herbert Matthews' reporting of Fidel Castro's struggle for Cuban freedom.

Although the New York Times has somehow failed to call the fact to the explicit attention of its readers, we do not have in Cambodia a situation, such as that which has existed in South Vietnam, where there can be endless academic debate as to whether the conflict is or is not a "civil war." There is simply no room for debate about the fact that Cambodia is and has been the victim of the most explicit aggression by the Government of North Vietnam.

Under these clear-cut circumstances, if we fail to supply the Cambodians with the minimum hardware required for their own defense, the possibility of encouraging other nations elsewhere in Asia to defend themselves against Communist expansionism must surely be doomed to failure; and if we show ourselves incapable of implementing "the Nixon doctrine in its purest form" on the small scale required for the defense of Cambodia, how can we expect others to place confidence in the one approach to problems of regional security in Asia which specifically precludes the future use of American troops?

Should the New York Times succeed in turning American public opinion against foreign military assistance in one part of the world where the lines are so clearly drawn, how can we be sure that American opinion will not turn against it in others—perhaps even in Europe and in the Middle East—with consequences unimagined by the sages who occupy the cloistered editorial offices of the New York Times?

For the sake of peace, and for the sake of freedom—yes, even if it involves only the freedom of those miserable Cambodians—I hope and pray that the New York Times will fail.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 3160) to provide for a modification in the par value of the dollar, and for other purposes.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 2076. An act for the relief of Vladimir Rodriguez LaHera;

H.R. 3751. An act for the relief of Albert M. Reiser, Jr.;

H.R. 8395. An act to amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes; and

H.R. 9473. An act for the relief of Mrs. Rosanna Thomas.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 2076. An act for the relief of Vladimir Rodriguez LaHera;

H.R. 3751. An act for the relief of Albert M. Reiser, Jr.; and

H.R. 9473. An act for the relief of Mrs. Rosanna Thomas; to the Committee on the Judiciary.

H.R. 8395. An act to amend the Vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes; to the Committee on Labor and Public Welfare.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, there will be a period for the transaction of routine morning business, with statements by Senators therein limited to 3 minutes.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 664, 672, and 673, all of which have been cleared on both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SMALL BUSINESS ACT

The Senate proceeded to consider the bill (S. 3166) to amend the Small Business Act, which has been reported from the Committee on Banking, Housing and Urban Affairs with an amendment to strike out all after the enacting clause and insert:

That paragraph (4) section 4(c) of the Small Business Act (15 U.S.C. 633) is amended—

(1) by striking out "\$3,100,000,000" and inserting in lieu thereof "\$4,100,000,000";

(2) by striking out "\$450,000,000" and inserting in lieu thereof "\$500,000,000"; and

(3) by striking out "\$300,000,000" and inserting in lieu thereof "\$350,000,000".

Sec. 2. Paragraphs 4(A) and 5(A) of section 7(a) of the Small Business Act (15 U.S.C. 636) are amended by striking out "\$350,000" and inserting in lieu thereof "\$500,000".

Sec. 3. Section 402(a) of the Economic Opportunity Act of 1964 (42 U.S.C. 2902(a)) is amended by striking out "\$25,000" and inserting in lieu thereof "\$50,000".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-693), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

HISTORY OF LEGISLATION

S. 3166 was introduced on February 14, 1972, and hearings were held by the Small

Business Subcommittee on March 9, 1972. On March 15, 1972, the committee voted unanimously to report out the bill, S. 3166, with amendments.

EXPLANATION OF BILL

S. 3166 is divided into three sections.

Section 1 of the bill amends section 4(c) of the Small Business Act to increase the total amount of loans, guarantees, and other obligations or commitments outstanding by the Small Business Administration. Administrator Kleppe informed the committee in February that by the end of this fiscal year his agency will have reached the maximum levels set by Congress in May of 1971.

Paragraph 1 of this bill will increase from \$3.1 billion to \$4.1 billion SBA's lending authority for direct, immediate participation and guaranteed loans under section 7(a); displaced business loans under section 7(b)(3); trade adjustment assistance loans under section 7(e); subcontract authority under section 8(a); and economic opportunity loans under title IV of the Economic Opportunity Act of 1964.

Paragraph 2 of section 1 will increase from \$450 million to \$500 million SBA's lending authority to SBIC's under title III of the Small Business Investment Act of 1968.

Paragraph 3 of the bill will increase from \$300 million to \$350 million SBA's lending authority under title IV of the Economic Opportunity Act of 1964 for loans to low-income individuals and for businesses located in areas of high unemployment or low income.

The Small Business Administration estimates that these increases will assure continued lending activities through fiscal year 1973.

Section 2 of the bill will increase the Small Business Administration's lending authority under section 7(a) from a maximum loan of \$350,000 to \$500,000.

Small business is defined in the Small Business Act as one which is independently owned and operated and which is not dominant in its field of operation. The \$350,000 limitation now imposed on SBA has not been increased since the agency was made permanent in 1958. During the intervening years business costs have increased considerably and if small business concerns are to remain competitive they must be assured of adequate sources of capital.

Section 3. During the committee's consideration of this bill an amendment was offered to increase from \$25,000 to \$50,000 the maximum loan that the Small Business Administration is authorized to make, participate (on an immediate basis) in, or guarantee to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or to small business concerns owned by low-income individuals.

The program ceiling increases proposed in S. 3166 represent neither an appropriation of funds nor an authorization for appropriations. They represent, rather, proposals to increase the amounts which may be outstanding from SBA's business loan and investment revolving fund at any one time for purposes of particular SBA financial assistance programs.

Section 4(c) (1) of the Small Business Act, as amended by Public Law 89-409 approved May 2, 1966, provided for the establishment of two revolving funds as of July 1, 1966 (a business loan and investment fund, and a disaster loan fund) for the financing of SBA's programs.

Section 4(c) (3) of the act authorizes appropriations to the two funds "in such amounts as may be necessary." However, with respect to the business loan and investment fund, the Congress has set limits on the amounts which may be used for the

various programs by providing in section 4(c)(4) for limitations on the amounts of loans, guarantees, and other obligations or commitments which may be outstanding at any one time from that fund.

With reference to these limitations, it is of considerable significance that they are neither an authorization for funds nor a mechanism by which funds are made available to carry out the various programs involved. Instead, they represent the means by which the Congress controls the extent of the use of available funds for the respective programs.

It is necessary for the financing of SBA's programs that the ceiling figures stated in section 4(c)(4) be raised from time to time. This results from a combination of medium-term loan repayment, steadily increasing loan volume, and a recent need to depend more on the use of guaranteed loans.

Public Law 87-550, approved July 25, 1962, requires that SBA advise the Congress periodically of the ceiling increases necessary for the continuation of its programs, and that such advice include program needs for the fiscal year under consideration plus the two succeeding fiscal years. In keeping with this requirement, S. 3166 proposes increases which would permit the continuation of SBA's financial assistance programs at presently projected levels through the current fiscal year plus fiscal year 1973.

CORDON RULE

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

LONGFELLOW NATIONAL HISTORIC SITE

The Senate proceeded to consider the bill (S. 3129) to authorize the establishment of the Longfellow National Historic Site in Cambridge, Mass., and for other purposes, which has been reported from the Committee on Interior and Insular Affairs with an amendment on page 3, line 3, after the word "this", to strike out "Act." and insert "Act, not to exceed, however, \$586,600 (May 1971 prices) for development of the area, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein."; so as to make the bill read:

S. 3129

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve in public ownership for the benefit and inspiration of the people of the United States, a site of national historical significance containing a dwelling which is an outstanding example of colonial architecture and which served as George Washington's headquarters during the siege of Boston in 1775-1776, and from 1837 to 1882 as the home of Henry Wadsworth Longfellow, the Secretary of the Interior is authorized to acquire by donation the fee simple title to the real property and improvements thereon, together with furnishings and other personal property, situated at and known as 105 Brattle Street, Cambridge, Massachusetts, for establishment as the Longfellow National Historic Site.

SEC. 2. The Secretary of the Interior is further authorized to accept the donation of not less than \$200,000, and such other

sums of money as may be tendered from time to time by the Trustees of the Longfellow House Trust, established pursuant to indentures dated October 28, 1913, and November 18, 1914, and such funds or any part thereof and any interest thereon, may be used exclusively for the purpose of administration, maintenance, and operation of the Longfellow National Historic Site.

SEC. 3. The Longfellow National Historic Site shall be established when title to the real and personal property described in section 1 of this Act and the sum of \$200,000 as set forth in section 2 of this Act have been accepted by the Secretary of the Interior, and upon such establishment, the Longfellow National Historic Site shall be administered by the Secretary of the Interior in accordance with the Act approved August 25, 1916 (39 Stat. 535), as amended and supplemented, and the Act approved August 21, 1935 (49 Stat. 666).

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, not to exceed, however, \$586,600 (May 1971 prices) for development of the area, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

MR. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-702), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of S. 3129 is to establish the Longfellow National Historic Site in Cambridge, Mass., and authorizes the Secretary of the Interior to acquire by donation the former home, together with furnishings and other personal property, of one of the most popular American poets of the 19th century, Henry Wadsworth Longfellow. The bill also authorizes the Secretary of the Interior to accept the donation of not less than \$200,000 from the trustees of the Longfellow House Trust, which may be used exclusively for the purpose of administration, maintenance, and operation of this proposed National Historic Site.

In addition to the Longfellow home, the proposed historic site includes the carriage house and formal garden, both designed by Longfellow himself. Over 100,000 people have visited the Longfellow home in the last 5 years alone, and in 1962 the home was designated as a registered historic landmark.

BACKGROUND

The Longfellow House is of exceptional importance, and from the standpoint of national significance it is fully suitable for establishment as a national historic site for several reasons.

First, this handsome and very well preserved mid-18th century mansion is considered to be one of the best examples of the late Georgian period architecture and has been illustrated in most standard college textbooks on architectural history. Most of the interesting original elements remain intact, and it has lost none of its charm through the normal growth process of occasional alterations during two centuries of continuous use. The structure has always been carefully maintained and is in a good state of repair today.

Secondly, the house is rich in historical significance, as it was used as a hospital for

Colonials wounded at Lexington, Concord, and Bunker Hill, and was, during 10 months in 1775-76, the headquarters of Gen. George Washington during the siege of Boston.

But it is as the home of Henry Wadsworth Longfellow that the house is most important. Longfellow's association with the house began in 1837 when he rented a room there. In 1843, upon his marriage to Frances Elizabeth Appleton, the house was given to the couple as a wedding present by the bride's father.

The only American to be memorialized in the "Poet's Corner" at Westminster Abbey, Longfellow's vivid commemoration of his historic events, such as "Paul Revere's Ride," and homey descriptions of everyday life, such as "The Village Blacksmith," create a tableau of American culture which is widely read and loved by many people. Longfellow wrote portions of some of his most famous works, including "The Courtship of Miles Standish," "Evangeline," and "The Song of Hiawatha," while he resided in the house in Cambridge between 1843 and his death in 1882.

COSTS

Since the 1.98 acres of land on which the Longfellow House is situated will be donated, there will be no land acquisition costs. No additional land is deemed necessary to establish the site.

Total development costs, based on May 1971 prices, are estimated at \$586,600, of which \$578,800 will be spent on buildings and utilities, primarily to be used for rehabilitation and remodeling of the house, stable, and shed. The remaining \$7,800 will be spent on roads and trails for rehabilitation of the walks and driveways. Annual operating costs are estimated to be \$172,000 in the first year and are expected to be about \$183,100 by the fifth year.

COMMITTEE AMENDMENT

The committee adopted the amendment recommended by the Department of the Interior to put a limitation on the sum to be authorized for development costs. The amendment is as follows:

On page 3, section 4, line 5, change the period to a comma and add the following: not to exceed, however, \$586,600 (May 1971 prices) for development of the area, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.

COMMITTEE ACTION

The Parks and Recreation Subcommittee held open hearings on S. 3129 on February 15, 1972, and the full committee in executive session on March 15, 1972, unanimously recommended enactment of the bill.

VAN BUREN-LINDENWALD HISTORIC SITE

The Senate proceeded to consider the bill (S. 1426) to establish the Van Buren-Lindenwald Historic Site at Kinderhook, N.Y., and for other purposes, which had been reported from the Committee on Interior and Insular Affairs with amendments on page 2, line 4, after the word "the", to strike out "Van Buren Lindenwald" and insert "Van Buren"; in line 11, after the word "the", to strike out "Van Buren Lindenwald" and insert "Van Buren"; and, in line 21, after the word "this", to strike out "Act." and insert "Act, not to exceed, however, \$225,000 for acquisition of land and \$2,278,000 (April 1971 prices) for development of the area, plus or minus such amounts, if any, as may be justified by reason of or-

dinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein." so as to make the bill read:

S. 1426

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of preserving for the education and inspiration of present and future generations the former residence (from 1841 until 1862) and only remaining structure intimately associated with Martin Van Buren, eighth President of the United States, the Secretary of the Interior shall acquire, on behalf of the United States, by gift, exchange, or purchase (with donated or appropriated funds) the real property and improvements thereon known as Lindenwald and located at Kinderhook, New York, together with such adjacent or related lands and interests therein as the Secretary determines are necessary for the establishment of a national historic site. The property so acquired shall be known and designated as the Van Buren National Historic Site. The Secretary may also acquire personal property used or to be used in connection with the administration and interpretation of the national historic site.

Sec. 2. The National Park Service, under the direction of the Secretary of the Interior, shall administer, protect, and develop the Van Buren National Historic Site, subject to the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1 and others), and the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461 and others).

Sec. 3. There are authorized to be appropriated from time to time such sums as may be necessary to carry out the provisions of this Act, not to exceed, however, \$225,000 for acquisition of land and \$2,278,000 (April 1971 prices) for development of the area, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-703), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of S. 1426 is to preserve the former residence of Martin Van Buren, eighth President of the United States, at the only remaining site that is intimately associated with him—Lindenwald, his mansion at Kinderhook, N.Y.

HISTORICAL BACKGROUND

Lindenwald was built in 1797 and purchased by Mr. Van Buren in 1839. The mansion itself has been altered several times since its construction in the late 18th century. The original house is a substantial Federal type with later additions in the Gothic and Victorian styles. The main portion of the Van Buren House is brick, 2½ stories tall, on a stone foundation; it contains 36 rooms and passageways. The interior of the mansion remains relatively unchanged since the historic period. Most of the original hardware remains, including silver-plated knobs and hardware on the first floor and the carpenter locks on the second floor.

Since the beginning of the 20th century many efforts have been made to preserve

Lindenwald as a public historic site. Numerous attempts on the part of State agencies and private groups have been unsuccessful up to this point. The National Park Service expressed interest in Lindenwald as early as 1935, and in 1961 Lindenwald was registered as a national historic landmark in recognition of its exceptional value by way of its association with President Van Buren.

COSTS

The proposed Van Buren historic site will encompass approximately 42 acres. Land acquisition costs are estimated at \$225,000, to acquire easements in 20 acres that are presently privately owned, and to acquire in fee 20 acres which are privately held. The remaining 2 acres, which are owned by the State of New York, are to be donated. Total development costs are estimated to be \$2,278,000, of which \$1,974,000 will be used for building and utilities, with the main expenditures for restoration of the mansion and other buildings, and for archeological and historical research.

The remaining \$304,000 is to be spent on roads and trails, primarily to develop maintenance and parking areas. Annual operating costs are estimated to be \$87,900 in the first year and are expected to be about \$227,100 by the fifth year.

Mr. BUCKLEY. Mr. President, it was recently my privilege to make a favorable report from the Committee on Interior and Insular Affairs recommending passage of S. 1426, to establish a Van Buren National Historic Site at Kinderhook, N.Y.

The Van Buren homesite, known as Lindenwald and located in Kinderhook, N.Y., was registered as a national historic site in July 1961. As the only remaining edifice closely associated with President Martin Van Buren, it is fitting that the Lindenwald home should not only be preserved but also opened to the public.

Efforts on behalf of the preservation of the Van Buren home began early in this century. In 1936 concerned New Yorkers organized the Association for the Preservation of the Lindenwald house and property. At the same time the National Park Service expressed an interest. But not until 1961 was the Van Buren home at Kinderhook established as a national historic site.

The Lindenwald house is presently under private ownership. The legislation sponsored by Senator JAVITS and me as well as the companion legislation introduced in the House of Representatives by Congressman FISH will place the mansion in the National Park Service system.

This legislation requires the purchase of the house and surrounding property by the Federal Government. If purchased, Lindenwald will undergo restoration to recapture the original style of Martin Van Buren's home. Although subsequent owners of Lindenwald have remodeled and redecorated the house since President Van Buren's time, the interior is largely unchanged and according to the National Park Service, adequate research should facilitate restoration of the home to its condition during the time of Van Buren's occupancy.

The house is located in an agricultural area and has a clear view of the Hudson River Valley and of the Cat-

skill Mountains. These surroundings should not be difficult to maintain.

Van Buren was born and buried in Kinderhook. He was admitted to the New York Bar in 1803 and held various county and State officers before he became involved with the Federal Government. Van Buren's political career encompassed the judiciary, the legislative and the executive fields. It was highlighted by his positions as New York Attorney General, United States Senator, Governor of New York, Secretary of State, Vice President and President. Certainly, the house in which this active American spent 20 years of his life should be preserved.

Van Buren purchased Lindenwald in 1839 as a place of retirement. It became his permanent residence in 1841. The historic value of this house is unique in its intimate association with President Van Buren. It is in the interest of the American people to preserve and to open to the public the home of our eighth President. Lindenwald expresses much of Van Buren's style and it is undeniably a part of our heritage.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so as to read: "A bill to establish the Van Buren Historic Site, at Kinderhook, New York, and for other purposes."

Mr. JAVITS. Mr. President, I am pleased that the Senate has passed my bill, S. 1426, which would establish the Van Buren Historic Site at Kinderhook, N.Y. The proposed national historic site would preserve and protect Lindenwald, the home and most significant remaining structure associated with Martin Van Buren, the eighth President of the United States and a prominent New York citizen.

Since the beginning of the 20th century many efforts have been made to preserve Lindenwald as a public historic site. Numerous attempts on the part of State agencies and private groups have been unsuccessful up to this point. The National Park Service has expressed its interest in Lindenwald as early as 1935 and in 1961 Lindenwald was registered as a national historic landmark in recognition of its exceptional value by way of its association with President Van Buren. It is necessary that the Congress take the final step to establish Lindenwald as an historic site.

The original house at Lindenwald was built in 1797 by Peter Van Ness, a public figure of considerable prominence in the local community. In 1839 Martin Van Buren purchased the property which then consisted of a house and 130 acres of land. When his term as President ended in 1841 Van Buren returned to Lindenwald where he resided until his death in 1862. Lindenwald is the only remaining structure associated with President Van Buren.

The Interior Department has evaluated the site as to its possibilities for management as a national historic site and has determined that the site should be established as provided in S. 1426 with minor amendments. Adequate facilities

in existing structures on the site will allow the public to have great use and enjoyment of this historic property. Historians would be encouraged to study the site and the proposed collection of Van Buren memorabilia. Comprehensive planning would be coordinated with the appropriate State agencies to insure protection of the setting of Lindenwald.

I believe that it is important to establish memorials to those who have served as presidents of the United States whenever we have an appropriate opportunity. Lindenwald presents us with a fine opportunity and the Senate has it. A companion bill, H.R. 3619, has been introduced in the House by Congressman HAMILTON FISH of New York which hopefully will soon be acted on.

ELIZABETH R: A TRIBUTE

Mr. BYRD of West Virginia. Mr. President, a few years back, a prominent critic of the media referred to television as a "vast wasteland." More recently we have seen that alleged wasteland blossom like the proverbial rose, as a new trans-Atlantic wave of "quality television" continues to hit our shores. It all began with the "Forsythe Saga," based upon Galsworthy's sweeping panorama of a family through three generations. The unexpected popularity of that series proved to be prophetic.

A further evidence of public responsiveness to quality programming, when done with style and imagination, was the reception given Sir Kenneth Clark's "Civilisation" series. The current series of six broadcasts—I say "current" because even though the sixth in the series was shown on last Sunday evening, there will be a repeat of the sixth in the series on this coming Saturday evening—dealing with the life of the first Elizabeth. "Elizabeth R," has demonstrated yet again the immense appeal which quality fare can have. Millions of Americans have taken pleasure in following the dramatic portrayal of the "Virgin Queen" during one of the great ages of English and, indeed, of European history, a portrayal superbly delineated by Glenda Jackson. The complexity of the Queen's character, the difficult issues of politics and religion in a time which knew little or no tolerance, the rich diversity of Elizabethan life—brutal, passionate, intense—all these are vividly set forth in the current series, truly a distinguished contribution to television drama in our day.

"Elizabeth R" had been preceded—appropriately enough—by "The Six Wives of Henry VIII," a remarkable presentation by Keith Mitchell of that Tudor despot, father to Elizabeth and husband to no less than six wives in the course of his turbulent life. Here again, the complicated problems of the Reformation were effectively dramatized in the person of King Henry. Together, the two series have given the viewer a sense of participation in one of the greatest centuries in history—the period from the accession of Henry VIII in 1509 to the death of Elizabeth I in 1603, the age of Shakespeare and Drake, Philip II and the

Armada, Raleigh and Bacon, Luther and Erasmus, an age—like our own—of disruption and change, destructive and creative alike. It is a special tribute to the BBC productions that the essential character of the 16th century has been so powerfully revealed in the personalities of Henry and Elizabeth and all whose lives they touched.

The series restores our faith in the possibilities of television to achieve quality drama without sacrificing human interest and appeal. The BBC is to be congratulated for this production, and for others in the past and yet to come. A standard has been set which cannot but have a healthy influence upon the American television industry. I am especially pleased to commend Station WETA-TV for carrying this series and thereby contributing so richly to the public good and to the cause of better television fare in this area. In so doing, WETA has truly performed a public service, in the best sense of that phrase.

The success of "Elizabeth R" has proved again that "educational" television need not be dull and uninspired. The romance of history, made tangible in the actual biographies of great personalities, is a never-failing resource, at once instructive and entertaining.

It is noteworthy that a new series is to be launched next week, based upon the Leatherstocking tales of James Fenimore Cooper, classics of well-loved Americana, "The Last of the Mohicans." Surely there is some irony in the fact that this—as well as a 13 part series on the history of the old colony, "America"—are being presented by the BBC. In fact, of course, several popular hits of the current season—"All in the Family" and "Sanford and Son"—are only recently naturalized descendants of British series.

A quality invasion of this kind represents, in fact, a kind of liberation, and we may hope that American television, with its immense technical resources, will respond to the stimulus. In the meantime, we are all the beneficiaries of these imaginatively conceived, stylishly produced, and beautifully acted series.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate the following letters, which were referred as indicated:

REPORT ON OVEROBLIGATIONS OF APPROPRIATIONS

A letter from the Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that certain appropriations have been apportioned on a basis which indicates the necessity for supplemental estimates of appropriations (with accompanying papers); to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

S. Con. Res. 59. Concurrent resolution to authorize the loan of the Cornelia Fasset painting, "The Electoral Commission of 1877," to the National Portrait Gallery of the Smithsonian Institution (Rept. No. 92-706).

By Mr. HANSEN, from the Committee on Interior and Insular Affairs, with an amendment:

S. 3159. A bill to authorize the Secretary of the Interior to establish the John D. Rockefeller, Jr., Memorial Parkway, and for other purposes (Rept. No. 92-707).

REFERRAL OF A BILL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 558, H.R. 7117, to amend the Fisherman's Protective Act, be referred to the Committee on Foreign Relations, with instructions that it will be reported back to the Senate within 40 days.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. COOK (for himself, Mr. YOUNG, Mr. MCGEE, Mr. PASTORE, Mr. STEVENS, Mr. HUMPHREY, Mr. BELLMON, Mr. MCGOVERN, Mr. DOLE, Mr. ANDERSON, and Mr. WILLIAMS):

S. 3393. A bill to amend title XVII of the Social Security Act to provide financial assistance to individuals suffering from chronic kidney disease who are unable to pay the costs of necessary treatment. Referred to the Committee on Finance.

By Mr. DOMINICK (for himself, Mr. HATFIELD, Mr. WEICKER, and Mr. ALLOTT):

S. 3394. A bill to permit citizens of the United States to buy, hold, and sell gold. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. DOMINICK:

S. 3395. A bill to further the achievement of equal educational opportunities. Referred to the Committee on Labor and Public Welfare.

By Mr. FONG:

S. 3396. A bill for the relief of Roland Q. Lin; and

S. 3397. A bill for the relief of Joe M. Morgan. Referred to the Committee on the Judiciary.

By Mr. HARRIS:

S. 3398. A bill providing for the election of the tribal council of the Osage Nation of Indians. Referred to the Committee on Interior and Insular Affairs.

By Mr. MAGNUSON (by request):

S. 3399. A bill to amend the provisions of title 14, United States Code, relating to the flag officer structure of the Coast Guard, and for other purposes. Referred to the Committee on Commerce.

By Mr. MOSS:

S. 3400. A bill to provide for the issuance of a special series of postage stamps to commemorate the bicentennial of the Escalante Expedition. Referred to the Committee on Post Office and Civil Service; and

S. 3401. A bill to provide for the designation of the Escalante Trail, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. INOUE:

S. 3402. A bill to provide that persons who are nationals and citizens at birth under section 301(a)(7) of the Immigration and

Nationality Act shall retain their citizenship without meeting certain physical presence requirements. Referred to the Committee on the Judiciary.

S. 3403. A bill to amend the act of June 20, 1918, relating to the retirement of lighthouse service personnel involuntarily separated. Referred to the Committee on Post Office and Civil Service.

By Mr. SPONG (for himself and Mr. BEALL):

S. 3404. A bill to amend the Cargo Preference Act of 1954 for certain purposes. Referred to the Committee on Commerce.

By Mr. RANDOLPH (for himself, Mr. BAYH, and Mr. COOPER):

S. 3405. A bill to amend title 23 of the United States Code to establish a national scenic and recreational highway program. Referred to the Committee on Public Works.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 3406. A bill to declare certain Federal lands held in trust for the Confederate Tribes of the Goshute Indian Reservation. Referred to the Committee on Interior and Insular Affairs.

By Mr. WILLIAMS (for himself, Mr. RANDOLPH, and Mr. PELL):

S. 3407. A bill to amend the Education of the Handicapped Act to provide for improved opportunities for handicapped persons, and for other purposes. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COOK (for himself, Mr. YOUNG, Mr. McGEE, Mr. PASTORE, Mr. STEVENS, Mr. HUMPHREY, Mr. BELLMON, Mr. MCGOVERN, Mr. DOLE, Mr. ANDERSON, and Mr. WILLIAMS):

S. 3393. A bill to amend title XVII of the Social Security Act to provide financial assistance to individuals suffering from chronic kidney disease who are unable to pay the costs of necessary treatment. Referred to the Committee on Finance.

KIDNEY DISEASE TREATMENT ACT OF 1972

Mr. COOK. Mr. President, I send to the desk for appropriate reference a bill entitled "The Kidney Disease Treatment Act of 1972."

I introduce this measure on behalf of myself, Senators YOUNG of North Dakota, McGEE of Wyoming, PASTORE of Rhode Island, STEVENS of Alaska, HUMPHREY of Minnesota, BELLMON of Oklahoma, MCGOVERN of South Dakota, DOLE of Kansas, ANDERSON of New Mexico, and WILLIAMS of New Jersey.

Mr. President, this bill is designed to provide financial assistance to individuals suffering from chronic kidney disease, "or end stage renal disease," who are unable to pay the costs of necessary treatment. In addition, this act will assure that any individual who suffers from chronic renal disease will have available to him the necessary lifesaving care and treatment, and that he will not be denied such treatment because of his inability to pay for it.

The need to provide financial assistance to those suffering from kidney failure is obvious; in fact, it is acute. In excess of 8 million Americans suffer from some sort of kidney disorder. Of that number, more than 55,000 persons die of acute kidney disease each year. Further-

more, recent statistics disclose that kidney diseases are responsible for about 140 million total days of restricted activity, 63.5 million days of bed disability, and 17 million work loss days.

Such a high degree of prevalence of morbidity, itself predicates the need for treatment. Unfortunately the necessary lifesaving medical treatment is all too often beyond the means of the sick in spite of the fact that sophisticated medicine has developed the successful technique of treating kidney disorders. For example, there are three systems of delivering treatment—in the hospital, in an ambulatory care center, and in the home—all three of which are widely divergent in their costs to the patient.

Putting aside the geographic cost variations, experts who have studied health costs inform me that \$25,000 per year is the mean representative cost of dialysis treatment in the hospital, that \$20,000 per year is the price tag for treatment at an ambulatory care facility, and that \$20,000 for the first year and \$6,000 for each subsequent year is the median cost for dialysis treatment at home. At these prices, those in need of dialysis treatment can ill afford to stay alive.

This situation is a glaring absurdity in American medicine. For while methods have been developed essentially with Federal funds to create a successful means of treating and even curing kidney disorders, we have succeeded in pricing the treatment beyond the range of those who would most benefit by it.

Transplantation treatment pitifully reveals the same problem; prohibitively high costs. At the same time, however, somewhat more is involved than the purely financial obstacles which complicate the proper dispensing of treatment. Since the first successful transplant in 1956, success with transplantation of kidneys either from living donors or cadavers has been relatively consistent. The technical complexity of the operation is no longer a problem given our present-day medical sophistication. Instead, the body's natural immune response to foreign tissues continues to be the cause for kidney rejection.

The ultimate hope among sufferers of kidney disorders certainly lies in being totally cured. While dialysis sufficiently maintains that a human being will live a next-to-normal life so long as he receives his machine treatments 8 hours per day 3 days per week, it appears that many have been condemned to a life based upon the operability of a machine. This need not be the case should kidney transplants become widely available at affordable prices.

At present, transplant cost estimates vary depending upon the extent of treatment required before and after the transplant operation itself, but by no means can one assume that it is affordable. One analysis of integrated home dialysis/transplant therapy presumes the cumulative expense of treatment to be in excess of \$50,000 over a 10-year period. The implication to the family bread winner supporting a wife, two children, and earning an average wage is serious, and in all probability, disastrous. He is doomed to a life of bills, creditors, and

hardships because he may be one of the few people fortunate enough to receive a kidney transplant.

It is reported that approximately 50,000 persons victimized by kidney disorders are in need of treatment that is not available to them and that each year 7,000 more people develop kidney disorders severe enough to require dialysis maintenance. Virtually all of these people are prospective recipients of a kidney transplant. Unfortunately, problems arise with too few donors, tissue incompatibilities and dissimilar blood types so that the chance of receptivity of a kidney by a patient is dismal at best. Consequently, the incidence of those that must be maintained through a process which passes blood through an artificial kidney machine to filter wastes is indeed staggering.

The common misconception today is that too few machines are available for use. This is not so. In fact, all eligible patients do not have access to kidney machines primarily because they cannot finance this expensive form of treatment rather than because of a lack of kidney machines. The question is, then, how is it possible to improve upon the discrepancy between apparent demand and abundant supply?

To a small extent, amnesty for the needy comes from several areas. Among the current sources of funds are the Office of Vocational Rehabilitation, medicare, medicaid, and a few Blue Cross and private insurance programs. The Public Health Service is currently supporting several studies of the feasibility of undertaking mass screening programs while the National Kidney Foundation has an active program of studying kidney disease and its treatment. However, the most important philanthropic activities are the result of local fund raising campaigns supported by the citizenry. It is through these drives, campaigns, and solicitations that the greatest number of kidney disease sufferers are granted their reprieve. But these drives cannot and will not sustain those requiring treatment.

Throughout the Nation, and in my own State of Kentucky, the biggest problems in descending order are money, facilities, trained personnel, and equipment. Congressman WILBUR MILLS, the distinguished chairman of the House Ways and Means Committee, recognized this and acted to correct the urgent need by introducing H.R. 12043 on December 6, 1971. Senator JOHN SPARKMAN of Alabama likewise recognized the urgency of assisting sufferers of kidney disorders, and to that end introduced S. 3286 on March 12 of this year.

At this time, it gives me great pleasure to join with these distinguished gentlemen in securing kidney disease treatment for all who need it. Like H.R. 12043 and S. 3286, the bill which I introduce today will provide for a program of assistance under which payments will be made to individuals requiring treatment for any part of the costs of such treatment which they are unable to pay from funds otherwise available to them. This bill will also provide that payments involving hemodialysis will be made only

to the extent that they do not exceed the cost of the least expensive form of dialysis which is medically and "socially" sufficient.

There are, however, differences between the two previously mentioned bills and the one I introduce today. They are two:

First, my bill contains no provision authorizing grants to States, localities, or public or nonprofit private institutions for the development of improved methods of treatment, the training of personnel, the dissemination of information, or the establishment of hemodialysis centers. This is done after much consultation with and at the recommendation of the National Kidney Foundation. I am firmly convinced that if patient costs are covered, the normal supply-demand situation will take care of the costs of training, artificial kidney center construction and supply. It would only remain to direct available moneys to an area where they will have the greatest impact on saving lives. By making funds directly available to people requiring medical treatment, I feel certain that we will accomplish this goal.

Second, a section is added to my bill defining the scope of benefits provided to an individual. It specifically states that a person receiving treatment shall not be required to pay costs of that treatment which exceed 10 percent of his taxable yearly income. Quite clearly, this method of payment has many advantages. The patient would be assured that medical treatment is not beyond his means, and therefore he would not be hesitant in seeking the necessary medical care. At the same time, the patient would be cognizant of the fact that this plan would be no dole, but rather a partnership which requires that he pay a portion of his medical expenses; in this case the equivalent of 10 percent of taxable income.

In arriving at a percentage which the patient would be required to pay, it was thought that 10 percent would be within the range of most people. We are attempting here to assist the low-income wage earner; a 10-percent payment would not have proportionally as drastic an economic impact as is now the case. Also, a person in a higher salary bracket, above \$20,000 for example, would normally be excluded from this program being that the means are available to him to meet his medical expenses, and that he would surely be enrolled in a health insurance plan which would cover his expenses.

In closing, let me add that as the fourth greatest cause of death in the United States, we can ill afford to ignore the seriousness of kidney disease any longer. This Nation has perhaps the best trained physicians and the most sophisticated equipment in the world, yet the afflicted are constrained from receiving the proper care because the costs are well beyond their means. My bill, I believe, is a necessary approach toward reversing the current financial restrictions of delivering kidney treatment to all who need it.

By Mr. DOMINICK (for himself, Mr. HATFIELD, Mr. WEICKER, and Mr. ALLOTT):

S. 3394. A bill to permit citizens of the United States to buy, hold, and sell gold. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. DOMINICK. Mr. President, I introduce a bill on behalf of myself, Senators ALLOTT, HATFIELD, and WEICKER, which would restore to Americans the unfettered right to buy, possess, and sell gold. We should no longer tolerate 1933 circumstances as justification for continued prohibitions on the private ownership of gold.

The present-day realities are that the United States has less than \$11 billion in gold reserves and roughly \$50 billion in overseas dollar liabilities. As a matter of fact, the Eurodollar market has been estimated to equal about 30 years of South African gold production.

With the free market price of gold hovering around \$48 per ounce and the increasingly uncertain international monetary market, it is quite clear that any return to convertibility would trigger a run on our remaining reserves. Domestic gold production in 1971 was 1.494 million ounces, a 14-percent decrease from the previous year. Imports increased from a 1970 level of 6.6 million ounces to 7.2 million ounces, with its adverse effect on our balance-of-payments problem.

The U.S. Bureau of Mines estimates that at prices up to \$140 per ounce, we could mine 237 million ounces of gold. Beyond giving a much needed injection to our mining industry, such an increase in gold production would substantially alleviate our trade deficit.

The President's action suspending convertibility demonetized gold and relegated it to the role of a nonmonetary commodity. As a commodity, gold should be as freely available for ownership as pork bellies, scrap steel and silver. Of the 116 member nations in the International Monetary Fund, 100 have more liberal gold ownership laws than the United States. Yet, we continue to be prisoners to anachronistic concepts.

The cornerstone of our economic system is the free interaction of supply and demand as the determinant of worth or value; and this can only be accomplished with gold by restoring to Americans their right to own gold.

In addition to ending the ownership discrimination against Americans, my bill would insure that the U.S. Treasury has a continuing source of supply of gold upon which it would draw to meet international financial institution gold contribution requirements.

The bill provides that domestic refiners of new gold would be required to offer for sale to the Treasury 2½ percent of their quarterly production at the official price. As a result, Treasury could purchase 10 percent of the domestic gold production at a price of \$38 per ounce. Any requirements above this amount would have to be satisfied through private market purchases at the prevailing private market price. In order to avoid the possibility that large gold sales by

the Treasury could depress the private market, the bill only permits Treasury gold sales at a price which is 15 percent above the current private market price.

Mr. President, I urge that Congress act as expeditiously as possible and use this legislative key to free Americans from their 1933 prevention of gold ownership hobbles.

By Mr. DOMINICK:

S. 3395. A bill to further the achievement of equal educational opportunities. Referred to the Committee on Labor and Public Welfare.

Mr. DOMINICK. Mr. President, on March 17, President Nixon sent to the Congress a message addressing itself to what is currently this country's most compelling domestic dilemma—school busing. To remedy the present and threatened inequities and hardships caused by busing, President Nixon outlined a two-step legislative program promising reasonable solutions. The first step of the program, the "Student Transportation Moratorium Act of 1972," has already been introduced as S. 3388 by the distinguished senior Senator from Nebraska (Mr. HRUSKA).

Mr. President, I now introduce for appropriate reference the President's companion bill, the "Equal Educational Opportunities Act of 1972." Among other things, this bill is intended to be the legislation referred to in section 2(a)(4) of the "Student Transportation Moratorium Act of 1972" which establishes clear uniform school assignment standards to meet 14th amendment obligations further defined in this bill.

To accomplish the objective of the bill title, a dual program is outlined. Title I serves to reestablish commitments tragically lost in the scramble of the busing mania, that the ultimate purpose of any educational expenditure or effort must be to improve the educational opportunity of the children, regardless of race, color, national origin, or language. It provides assistance sufficiently concentrated to provide the critical resource mass necessary to make compensatory education a reality rather than a sociological term to the Nation's educationally disadvantaged children. Title I of the bill utilizes approximately \$2.5 billion authorized under title I of the Elementary and Secondary Education Act of 1965 and the soon-to-be-enacted Emergency School Aid Act to upgrade the Nation's poorest schools. In upgrading the schools, the resources will be concentrated on improving basic instructional programs for language skills and mathematics and on basic supportive services.

Mr. President, the second phase of the bill seeks to guarantee a conducive educational atmosphere for our children substantially devoid of long-term large-scale, forced busing. It recognizes that our schools cannot solely shoulder the burden of eliminating racial disparities in our society—that our children should be taught rather than used to achieve a multiracial society which the adult community has been unable or unwilling to

do for themselves. Titles II, III, and IV of the bill activate congressional enforcement authority contained in the 14th amendment by setting national standards of equal educational opportunity and national remedies to guide courts in what heretofore has been the judicial jungle of school desegregation cases. Title II clearly defines what constitutes a denial of equal educational opportunity; title III identifies which parties can proceed in which judicial manner; and title IV creates a priority of remedies allowing increased busing only in extraordinary, short-term circumstances.

Mr. President, in conclusion, this bill, together with the Student Transportation Moratorium Act, offers a most reasonable vehicle for our children through unnecessary educational pitfalls created by well-intended adults. It relegates the schoolbus to its former position of prominence as an educational tool rather than as a dominant sociological force, while affirming this Nation's commitment to equal educational opportunities for all children. This being a matter of primary importance, I urge diligent legislative effort and timely enactment of the Equal Educational Opportunities Act of 1972.

Mr. President, I encourage and welcome cosponsorship from any and all of my colleagues, and I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Educational Opportunities Act of 1972."

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin; and

(2) the neighborhood is an appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this Act to provide Federal financial assistance for educationally deprived students and to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

FINDINGS

SEC. 3. (a) The Congress finds that—

(1) The maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, or national origin denies to those students the equal protection of the laws guaranteed by the Fourteenth Amendment;

(2) The abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems;

(3) For the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(4) The implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts

of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided.

(5) excessive transportation of students creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity;

(6) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(7) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have failed to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

DECLARATION

SEC. 4. The Congress declares that this Act is the legislation contemplated by section 2(a)(4) of the "Student Transportation Moratorium Act of 1972."

TITLE I—ASSISTANCE

CONCENTRATION OF RESOURCES FOR COMPENSATORY EDUCATION

SEC. 101. (a) The Secretary of Health, Education and Welfare (hereinafter in this Act referred to as the "Secretary") and the Commissioner of Education shall,

(1) in the administration, consistent with the provisions thereof, of the program established by title I of the Elementary and Secondary Education Act of 1965, and

(2) in the administration of any program designed to assist local educational agencies in achieving desegregation or preventing, reducing, or eliminating isolation based on race, color, or national origin in the public schools,

take such action consistent with the provisions of this title, as the Secretary deems necessary to provide assistance under such programs (notwithstanding any provision of law which establishes a program described by clause (2) of this subsection) in such a manner as to concentrate, consistent with such criteria as the Secretary may prescribe by regulation, the funds available for carrying out such programs for the provision of basic instructional services and basic supportive services for educationally deprived students.

(b) A local educational agency shall be eligible for assistance during a fiscal year under any program described by clause (2) of subsection (a) of this section (notwithstanding any provision of law which establishes such program) if it

(1) is eligible for a basic grant for such fiscal year under Title I of the Elementary and Secondary Education Act of 1965,

(2) operates a school during such fiscal year in which a substantial proportion of the students enrolled are from low-income families, and

(3) provides assurances satisfactory to the Secretary that services provided during such fiscal year from State and local funds with respect to each of the schools described in clause (2) of this subsection of such agency will be at least comparable to the services provided from such funds with respect to the other schools of such agency.

(c) In carrying out this section, the Secretary and the Commissioner of Education shall

seek to provide assistance in such a manner that

(1) the amount of funds available for the provision of basic instructional services and basic supportive services for educationally deprived students in the school districts of local educational agencies which receive assistance under any program described in clause (1) or (2) of subsection (a) of this section is adequate to meet the needs of such students for such services, and

(2) there will be adequate provision for meeting the needs for such services of students in such school districts who transfer from schools in which a higher proportion of the number of students enrolled are from low-income families to schools in which a lower proportion of the number of students enrolled are from such families,

except that nothing in this title shall authorize the provision of assistance in such a manner as to encourage or reward the transfer of a student from a school in which students of his race are in the minority to a school in which students of his race are in the majority or the transfer of a student which would increase the degree of racial impaction in the schools of any local education agency.

(d) The Secretary shall prescribe by regulation the proportions of students from low-income families to be used in the program established by this title and may prescribe a range of family incomes, taking into account family size, for the purpose of determining whether a family is a "low-income family."

EFFECT ON ENTITLEMENTS AND ALLOTMENT FORMULAS

SEC. 102. Nothing in this title shall be construed to authorize the Secretary or the Commissioner of Education to

(1) alter the amount of a grant which any local educational agency is eligible to receive for a fiscal year under title I of the Elementary and Secondary Education Act of 1965, or

(2) alter the basis on which funds appropriated for carrying out a program described by section 101 (a) (2) of this title would otherwise be allotted or apportioned among the States.

SEC. 103. Upon approval of a grant to a local educational agency to carry out the provisions of this title, the assurances required by the Secretary or the Commissioner of Education pursuant thereto shall constitute the terms of a contract between the United States and the local educational agency, which shall be specifically enforceable in an action brought by the United States.

TITLE II—UNLAWFUL PRACTICES

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 201. No State shall deny equal educational opportunity to an individual on account of his race, color, or national origin, by:

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools.

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with title IV of this Act to remove the vestiges of a dual school system.

(c) the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student.

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff.

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency.

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

RACIAL BALANCE NOT REQUIRED

SEC. 202. The failure of an educational agency to attain a balance, on the basis of race, color, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

SEC. 203. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity unless such assignment is for the purpose of segregating students on the basis of race, color, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

TITLE VIII—ENFORCEMENT

CIVIL ACTIONS

SEC. 301. An individual denied an equal educational opportunity, as defined by this Act, may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this Act referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

JURISDICTION OF DISTRICT COURTS

SEC. 302. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 301.

INTERVENTION BY ATTORNEY GENERAL

SEC. 303. Whenever a civil action is instituted under section 301 by an individual, the Attorney General may intervene in such action upon timely application.

SUITS BY THE ATTORNEY GENERAL

SEC. 304. The Attorney General shall not institute a civil action under section 301 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of title II of this Act; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

ATTORNEY'S FEES

SEC. 305. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

TITLE IV—REMEDIES

FORMULATING REMEDIES APPLICABILITY

SEC. 401. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

SEC. 402. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof, which may remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without exceeding the transportation limits set forth in section 403;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools or educational parks; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

TRANSPORTATION OF STUDENTS

SEC. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require an increase for any school year in

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the sixth grade or below transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the sixth grade or below transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time.

(b) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan which would require an increase for any school year in

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the seventh grade or above transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the seventh grade or above transported by an educational agency over the comparable

average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time,

unless it is demonstrated by clear and convincing evidence that no other method set out in section 402 will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws that has been found by such court, department, or agency. The implementation of a plan calling for this subsection, shall be deemed a temporary measure. In any event such plan shall be subject to the limitation of section 407 of this Act and shall only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402. If a United States district court orders implementation of a plan requiring an increase in transportation, as described in clause (1) or (2) of this subsection, the appropriate court of appeals shall, upon timely application by a defendant educational agency, grant a stay of such order until it has reviewed such order.

(c) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

DISTRICT LINES

SEC. 404. In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, or national origin.

VOLUNTARY ADOPTION OF REMEDIES

SEC. 405. Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

REOPENING PROCEEDINGS

SEC. 406. On the application of an educational agency, court orders or desegregation plans under Title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin shall be reopened and modified to comply with the provisions of this Act.

TIME LIMITATION ON ORDERS

SEC. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, terminate after it has been in effect for five years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order requiring such educational agency to transport students for such purposes shall be entered unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than five years.

SEC. 408. Any court order requiring the desegregation of a school system shall termi-

nate after it has been in effect for ten years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order shall be entered against such agency for such purpose unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than ten years.

SEC. 409. For the purposes of sections 407 and 408 of this Act, no period of time prior to the effective date of this Act, shall be included in determining the termination date of an order.

TITLE V—DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) the term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801(k) of the Elementary and Secondary Education Act of 1965.

(b) the term "local educational agency" means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965.

(c) the term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency or within a school on the basis of race, color, or national origin.

(d) the term "desegregation" means "desegregation" as defined by section 401(b) of the Civil Rights Act of 1964.

(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(f) the term "basic instructional services" means instructional services in the field of mathematics or language skills which meet such standards as the Secretary may prescribe.

(g) the term "basic supportive services" means noninstructional services, including health or nutritional services, as prescribed by the Secretary.

(h) expenditures for basic instructional services or basic supportive services do not include expenditures for administration, operation and maintenance of plant, or for capital outlay, or such other expenditures as the Secretary may prescribe.

Mr. DOMINICK. Mr. President, in conjunction with my introduction of President Nixon's Equal Educational Opportunities Act of 1972, I wish to bring to the attention of my colleagues a most practical analysis of the problem of minority exclusion and injustice by Joseph Alsop in this morning's Washington Post.

Mr. Alsop quite validly traces upward mobility of previous minority groups to jobs—jobs acquired through improved education. The same avenue lies open to present excluded minorities through improved education gained, not through what Mr. Alsop identifies as the "phony cure" of busing, but through strong compensatory education. Mr. Alsop cites strong evidence that the concept is indeed the right approach toward achieving the future dignity of all races, creeds, and colors.

Mr. President, I ask unanimous consent that the text of Mr. Alsop's March 22 column be printed at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BUSING—A PHONY CURE

(By Joseph Alsop)

One other point positively demands to be made about the busing controversy, which seems to be tearing a lot of people to bits. It concerns the escape of minority groups from exclusion and injustice—a process that has been far too little studied.

Our current plethora of guilt-ridden Americans talk as though exclusion and injustice for every minority were permanent American specialties. The contrary is actually true.

Japan, at present, has no less than five very harshly excluded minorities.

These are, the local children of black and white American soldiers, and three groups of pure Japanese blood whose origins are also lost in the mists of history, the Eta, the Fox people, and incredibly enough, "the unpersons."

In England, too, black citizens began to feel exclusion, prejudice and injustice just as soon as their numbers began to mount. In this country alone, in the whole modern world, have fair numbers of formerly excluded minority groups almost wholly escaped.

It has happened fairly recently. What are now called the "ethnic groups" suffered serious job discrimination, housing discrimination, and other forms of exclusion only four decades ago. Today, however, their situation is just the same as that of the once-dominant WASP.

Only 25 years ago, the Chinese and Japanese situation was worse, if anything, than that of our black minority today. The black minority never suffered anything like the Asian land laws of the West Coast states, which the Supreme Court only struck down in 1948. Today, however, the Chinese and Japanese situation is far superior, on average, to that of the poor old WASP.

It is perfectly clear, too, what produced the escapes from exclusion of these minorities. The secret can be put in one word: jobs.

All the formerly excluded minorities got better and better jobs, some by degrees, while the Chinese and Japanese got better jobs with an astonishing rush, despite their supposedly fatal different skin color.

In case of the black minority in America, a much more terrible past history and very heavy and continuing economic handicaps, both make the escape from exclusion and injustice a lot more difficult. But experience has still shown that escape will surely result, if the model of the previous escapes can only be followed. The secret again is jobs.

That hooks the matter directly onto the busing row because the gateway to decent jobs is decent education. No power on earth can terminate the exclusion and injustice suffered by black Americans, so long as an actual majority of black school-leavers are not given the simple educational tools to get and hold decent jobs. That is where we are today.

If school desegregation by busing would provide the needed educational tools, we ought to bus on a huge scale. The school data plainly show, however, that this is not true. Mere desegregation does little or nothing to overcome the terrible educational retardation that afflicts the average black child in school. Hence busing is a phony cure.

That leaves one other cure, but this cure is now widely considered worthless. It was said, for instance, that "there is not a shred of evidence that a compensatory education program . . . will improve the 'education' now being dispensed" by ghetto schools. The author of those words writes for a great New York newspaper. Maybe he ought to bustle up to New York and raise a major row because he has been grossly misinformed.

The success was never reported in New York, for reasons of fashion, presumably, that

leave one a bit bewildered. But there is far more than "a shred of evidence," generated right in New York City. It comes from the unique serious experiment in ghetto school improvement ever attempted in this country, this was called the More Effective Schools.

At the end of the 1966-67 school year, for example, the eighteen full-ghetto schools in the MES program underwent the usual reading tests. The end-third graders had every handicap other black children have. But in those tests they achieved a reading average bang on the nose of the national average.

It does not sound like much. But it was far, far more than has ever been achieved by simple school desegregation. It also meant that up through third grade, at least, there was no black education retardation. For want of local support, nonetheless, the MES experiment has been all but dismantled since 1967. Yet the real criticism of the President's new school message is still the flabbiness of the Nixon approach to ghetto school improvement.

By Mr. HARRIS:

S. 3398. A bill providing for the election of the tribal council of the Osage Nation of Indians. Referred to the Committee on Interior and Insular Affairs.

Mr. HARRIS. Mr. President, I send to the desk for appropriate reference a bill to provide for the election of the tribal council of the Osage Nation of Indians.

At a time when we profess to believe in tribal self-determination, the people of the Osage Nation are being frustrated in their efforts to gain control over their own lives, on issues which no longer only concern the disposition of oil, gas, and mineral estates in trust. The Osages rightfully expect to have a say in the vital decisions concerning the health, welfare, and education of their people. Yet, under present statutes, the existing powers of the Osage Tribal Council are limited to actions taken within the purview of the mineral trust estate. Perhaps the best explanation of this problem can be found in the official Bureau of Indian Affairs evaluation report for the Osage Agency, dated January 1971:

The present tribal council for the Osage Tribe was established by a 1906 Statute which provides for the election of a tribal council by headright share holders. There are many questions today as to the validity of the original roll which was created under the 1906 Statute. As it presently stands, it would be futile to challenge the roll. Aside from the questions which were raised as to the original roll, part of the dividedness which exists among the tribal members is the allegation that the present tribal council is not in fact truly representative of the Osage Tribe. In some respects these allegations may have merit. The 1906 Statute franchised the original headright holders but the present devolution of headright shares has caused the vote to become fractionalized, and further the headright voting system has created the condition where a proportion of Osage Indians who may be of one-quarter blood or more, but who do not own a headright interest, cannot therefore vote for the tribal council.

The present tribal council procedurally elected under the method delineated by the 1906 Statute is actively seeking to expand its functions in areas other than the mineral trust interest. These areas are education, housing, employment, and economic development. However, under the Statute the tribal council's powers are limited to actions

taken within the purview of the mineral trust estate.

The tribal council now finds itself in a legal quandary [sic] since their powers under the Statute are limited to the mineral trust estate but the needs of the Osage Tribe certainly extend beyond the mere management of that estate. The tribal council has recognized the shortcoming, but has not as yet accepted the limitation of the Statute and the lack of a formal constitution and bylaws. It finds itself in a legal dilemma since the tribal council enjoys the majority support of the headright holders [Osage Census roll in June 1970 numbered total of 8,200; in December 1970, 3,120 living persons with headrights, of whom 2,173 were eligible to vote for tribal council if over 21; 42% of headright owners live outside Oklahoma; one-third of all headright owners are non-Osage, since an Osage deemed "competent" to sell his headright may do so to non-Indians] while at the same time it may not necessarily enjoy the majority of the non-headright holders who are Osage Indians.

The Evaluation Team did discuss the situation with the tribal council and it is our present recommendation that the Commissioner consider presenting to the council various alternative methods to provide equal representation among all the Osage Indians, headright as well as non-headright holders. For instance, this could be accomplished by diverting the mineral trust estate from the general functions normally embodied in a tribal council by separating the mineral estate through a corporate trust structure and by establishing a tribal government governed by a constitution and bylaws. Another method could be to provide for an expansion of the tribal council and to allow the new members to be elected by the entire community while at the same time preserving the integrity of the mineral estate by the continuation of the present tribal council operation. These are not exclusive recommendations and they should be considered merely for discussion purposes. The underlying purpose of this recommendation is for the Commissioner to consider various alternatives which could be presented to the present governing body whereby representation of this [sic] unfranchised Osage Indians could obtain representation on a tribal governing body. [pp. 20-22] [emphasis added].

The recommendations contained in this report have yet to be put into action by the Commissioner of Indian Affairs. Therefore, in order to stimulate discussion within the Senate Committee on Interior and Insular Affairs on this issue, I am introducing a bill to amend the Osage Allotment Act of 1906 (34 Stat. 539, as amended) to provide for a new elected Tribal Council. This legislation, which was introduced in the House by Representative Abzug, would also create an Osage Minerals Board as a separate entity. A principal chief would preside over both the Council and the Board, and the present members of the Tribal Council would become the initial members of the Osage Minerals Board. The creation of a separate Tribal Council and Minerals Board basically implements the recommendations contained in the evaluation report. Furthermore, this bill would provide greater participation of all Osages of one-fourth degree Osage blood or more in the election of the Tribal Council. This would do much to end the situation whereby non-Indians control internal tribal governance.

Mr. President, I am delighted to see that the Senate Committee on Interior and Insular Affairs has scheduled hear-

ings on the Osage claims distribution legislation on March 28. I certainly hope that at the same time the committee will consider this closely related bill that I have introduced today.

Mr. President, I ask unanimous consent that the full evaluation report for the Osage Agency be printed in the Record, along with a copy of my bill.

There being no objection, the bill and report were ordered to be printed in the Record, as follows:

S. 3398

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 9 of the Act of Congress approved June 28, 1906 (34 Stat. 539) as amended by Section 7 of the Act of Congress approved March 2, 1929 (45 Stat. 1478) and further amended by the Act of Congress approved August 28, 1957 (71 Stat. 471) be, and the same is hereby, amended to read as follows:

(A) That the tribal government of the Osage Tribe of Indians, shall consist of one tribal council having the following officers: A principal chief, an assistant principal chief and eight members of the tribal council; said officers to be elected in a general election to be held in the city of Pawhuska, Oklahoma, on the first Monday in June, 1972, and on the first Monday in June each four years thereafter and said officers shall be elected for a period of four years commencing on the first day of July following said elections; that the Osage Tribal Council shall have or exercise all delegated or residual powers of tribal government excepting only management of the oil, gas, coal and other minerals underlying the area formerly known as the Osage Indian Reservation.

(B) The persons now holding office as councilmen of the present Osage Tribal Council shall, upon the election of officers to the tribal council in accordance with "A" above shall be thereafter members of the Osage Minerals Board and said board shall thereafter have all powers of management of the oil, gas, coal and other minerals that have prior to the date of passage of this act, been vested in the Osage Tribal Council by law.

(C) That person elected to the office of Principal Chief in the election provided for in "A" above shall be the presiding officer of the Osage Tribal Council and the Osage Minerals Board and in the absence of the Principal Chief the Assistant Principal Chief shall serve as presiding officer; the presiding officer shall vote only in case of a tie vote of the council or board.

(D) The person elected to the office of Assistant Principal Chief in the election provided for in "A" above shall have no vote in the proceedings of the Tribal Council or the Minerals Board unless he is presiding by reason of the absence of the principal chief; in the event that the office of Principal Chief becomes vacant, the person serving as Assistant Principal Chief shall assume the office of Principal Chief.

(E) No person may serve as Principal Chief or Assistant Principal Chief who is not an adult full-blood member of the Osage Tribe; no person may serve as a member of the Osage Tribal Council who is not an adult member of the Osage Tribe and possesses one-fourth degree or more of Osage Indian blood; and no person may serve as a member of the Osage Mineral Board who is not an allottee or a descendant of an allottee enrolled pursuant to the act of June 28, 1906 (34 Stat. 539) and who owns not less than one full Osage headright or mineral share.

(F) Voting for officers of the Osage Tribal Council shall be held at the Osage Agency and qualifications of voters shall be the same as qualifications for the office of tribal councilman; each person shall have one vote and voting shall be conducted by regulations

established by the Commissioner of Indian Affairs; Provided, that the use of absentee ballots are prohibited for elections of tribal officers.

(G) Only adult persons who are allottees or descendants of allottees enrolled pursuant to the act of June 28, 1906 (34 Stat. 539) and whose names appear on the quarterly annuity roll at the Osage Agency may vote for members of the Osage Minerals Board; voting shall be conducted by regulations established by the Commissioner of Indian Affairs; Provided, that each ballot shall have exactly the same value as the voter's headright interest shown on the last quarterly annuity roll.

(H) Filling of vacancies in the office of Assistant Principal Chief, in the tribal council and in the mineral board shall be provided for by regulations by the Commissioner of Indian Affairs.

(I) The Commissioner of Indian Affairs is hereby authorized to remove from any office in the tribal council or minerals board any person for good cause, to be by him determined, after the party involved has had due notice and opportunity to appear and defend himself.

(J) The powers and duties of the Osage Minerals Board shall continue in full force and effect to January 1, 1984 and thereafter until otherwise provided by Congress.

(K) That nothing herein shall be construed as in any way changing the rights of the Osage Tribe in oil, gas, coal, and other minerals as fixed in the act of June 28, 1906 as amended be construed to change or amend any valid mineral lease entered into prior to 1 July 1968.

EVALUATION REPORT: OSAGE AGENCY, JANUARY 11-15, 1971

INTRODUCTION

The Osage Agency evaluation was conducted on the premise that the Agency is to be service-oriented to the needs of the Indian people while it performs the trust duties of the United States, which are substantial at Osage. Within this premise, the evaluation aimed at determining the degree and extent of implementation of the Commissioner's policies and programs. These included tribal involvement in preparation of the 1973 Program Memorandum, tribal opportunity for contracting for services, and the general relationship of the Agency to the tribe, and the tribe with the surrounding community. In addition, the manner in which the Indian Business Development Fund is being utilized.

The Osage Agency serves Indians in Osage County, corresponding to the original reservation area. The minerals of the entire county are held in trust for the tribe. Trust status also applies to the surface rights of 230,000 acres in the county, nearly all of which belongs to individuals.

The population of the county includes 2,565 Indians according to the 1970 Census. About half of these are Osages. The Osage tribal roll includes about 8,200 members.

The Bureau of Indian Affairs maintains a permanent staff of 38 persons. Their grades and Indian descent are shown in the section on findings. The tribe pays for 10 of the BIA employees who are concerned with minerals; in addition the tribe at the present time pays for 4 members of the Interior Department Solicitor's Office who are stationed at Osage.

PROCEDURE

The team consisted of:

BIA Central Office

Arthur J. Gajarsa, Chairman (Assistant to the Commissioner).
Raymond Butler (Social Services).
Donald Maynard (Real Property Management).
Louis Conger (Statistics).

Department of Interior Central Office
Linda K. Bemis (Program Analyst, Bureau of Land Management).

Osage Tribal Council

John Shaw (Councilman).

Other Osage

Joseph Shunkamolah, Jr. (served on January 14).

The schedule follows:

Monday, January 11, 1971

Day—Meeting with Sylvester Tinker, Tribal Chief, and John Pappan, Agency Superintendent.

Evening—Meeting with Osages for Action at Hominy. John Shaw did not attend. Commissioner Bruce had met with this group in the morning, but not as a part of the evaluation effort.

Tuesday, January 12, 1971

Day—Meeting with BIA branch chiefs and chief of tribe in tribal council chamber.

Evening—Meeting of BIA team members with Agency Superintendent.

Wednesday, January 13, 1971

Morning—Interviews with individual Indians and community representatives in Osage Museum.

Afternoon—Part of team met with Osage Nation Organization; rest of team continued interviews with public.

Thursday, January 14, 1971

Day—Part of team attended a special meeting of the full council in the afternoon. The rest interviewed individual BIA employees and continued the public interviews throughout the day.

Friday, January 15, 1971

Morning—Wrap up with Agency Superintendent.

FINDINGS

A. Past economic situation

Until recently, everything at Osage revolved around the wealth of the mineral trust.

1. Those Osages with one or more headrights were wealthy and had a continuous quarterly income. Osages could afford higher education, and many did so.

2. The BIA program was funded by the tribe, and confined itself largely to mineral and land rights. Indians without headrights or trust land were not served. The tribe also funded a field office of the Solicitor at Osage, and does so today, but has requested Government funding.

3. There is a corpus of Federal legislation applying only to Osages. For example, 25 CFR part 73 specifies the tribal council and limits voting to Indian headright owners. Other parts of 25 CFR applying to Osages are 17 (wills), 74 (government of Osage villages), 108 (IIM accounts and budgets), 123 (tribal roll and competency), 127 (lands), 175 (mineral), and 183 (oil and gas). Osages are excluded from the IRA and Oklahoma Welfare Acts.

4. An outside population of lawyers grew up in Pawhuska, depending on Indian probates, guardianship actions, and other actions concerned with trust property, and competency status. In 1953, the BIA published a 192-page report "The Osage People and Their Trust Property" describing the situation and detailing abuses.

B. Current economic situation

In recent years income from the mineral trust has declined, and now stands at \$2,800 a year, about one-half the 1960 figure. This situation is bringing about changes and particular stresses.

1. Older Osages accustomed to living on headrights income can no longer do so. Many who never worked face a difficult adjustment late in life. Jobs are not always open to Osages because the community still

thinks of Osages as wealthy. Heirship fractionalization further reduces the amount received by individuals with only part of a headright.

2. Headright owners have a keen interest in raising oil and gas revenues. This tends to put the tribal council in the predicament to produce more income. When there may be little they can do about it. Whatever the prospect may be for secondary and tertiary recovery methods, and this is a major technical study in itself, there will be disagreements about the proper course of action. As an example, debate still goes on about a referendum taken years ago concerning reduced royalties for the waterflooding method of secondary oil recovery.

3. Other ways to increase tribal income are being pursued by the council:

(a) Reaffirming established water rights, charging for their use, and recovering just compensation for past and future condemnation actions. The tribe sees a Federal conflict of interest between the BIA and the Corps of Engineers in this field.

(b) Getting the BIA and the Department to take over the \$250,000 in Agency and Solicitor expenses still funded by the tribe (until 1968 the tribe paid all costs; now BIA pays about half the Agency cost).

(c) Legislation, which was introduced but lapsed with the 91st Congress, covered a number of issues. It included transfer of probate from State to Federal jurisdiction, so as to reduce legal fees and provide better protection to Osage property. (The Bar Association of Osage County, on the other hand, feels that the present fee schedule set by the Secretary for certain actions is too low).

(d) Eliminating certain kinds of taxation on trust income, by legislation, litigation, or regulation.

4. *Agricultural leases.* The Superintendent and the BIA Appraiser (Couch) were frequently praised by Indians for substantially raising grazing lease rates on trust property, over the opposition of the cattlemen's association. The BIA appraisal policy is to include non-Indian land values as the comparable sales or lease standard; apparently a considerable change from previous practice. Most Indians lease out their surface rights; there are 88 restricted Indian operators but only five are of economic size. About 16 percent of Osage County surface is in trust status.

A troublesome case mentioned by various Indian people concerned a white rancher (Morrison) with a 1/27th interest in a parcel adjoining other land he holds, who run cattle on the whole parcel and brought suit against the principal owners when they sought to fence their land. The owners are receiving no lease money while the case is in court.

5. A tribal judgment of \$13,000,000 has been appropriated by Congress. There are, of course, basic differences of opinion among the Osages on who should share and how the money should be programmed. Legislation is now being prepared for Congressional action.

6. The present council is moving into areas beyond the mineral trust by organizing committees for education, employment and industrial development, health and community services, and housing. A tribal housing authority is being established. The tribe has for some time been involved with OEO, especially in the NYC program. This expansion of the scope of council activity is resisted by the ONO group, which views the council as limited to dealing with the mineral estate.

7. In the last few years, the Agency has extended its services beyond the mineral and trust land functions. Such programs as social services, employment assistance, and scholarships have been added, as well as the Indian Business Development Fund. These

services are also available to non-Osage Indians living in Osage County. There were complaints about the one-quarter Indian blood requirement in some of these programs, especially scholarships.

8. *Trust status of the mineral estate.* The Act of October 6, 1966, states that minerals are reserved to the Osage Tribe until April 8, 1983, and thereafter until otherwise provided by Act of Congress. Osage opinion was virtually unanimous that the trust status must be continued beyond 1983 to permit secondary and tertiary recovery of oil and gas remaining in the ground (estimated presently to equal one-half the original total). Related to this is the fear that Osages who have competency forced on them are not yet ready to protect themselves and their property.

9. *Credit.* Osages do not participate in the Revolving Loan Fund, by statute. Need for Indian credit was mentioned, but not as a major problem. Local banks apparently are restrictive in loans, but this may be a general local policy not confined to Osages. Tulsa banks are stated to be more cooperative.

10. *Housing.* The Council is setting up an Indian Housing Authority. Three tracts of land for Osage Indian villages were established by 25 CFR part 74—Pawhuska, Hominy, and Grayhorse (at Fairfax). Members of the Pawhuska village community council mentioned needs for roads and utilities (the water pipes are old and tend to break). The county has started putting in streets, curbs, gutters, and signs. Housing did not surface as a major issue in the interviews.

C. Osage Tribe

1. Of 8,200 on the Osage Census roll in June 1970, 4 percent were fullbloods and 70 percent were less than one-quarter Indian blood. Apparently a number of mixedbloods were carried on the original 1906 roll, in addition to much intermarriage since. So far as can be determined from the addresses on the census roll, admittedly incomplete, 30 percent live in Osage County, 30 percent in other parts of Oklahoma, and 40 percent live outside Oklahoma.

2. In December 1970 there were 3,120 living persons with headrights (i.e., owners of the mineral estate) plus 122 estates of deceased persons not yet distributed to heirs. Owners of headrights may be original allottees from the 1906 roll, their heirs, and purchasers of headrights from competent Indians. Of these, 2,178 were Osages and thus eligible to vote for the tribal council if over age 21. The geographic distribution of headright owners resembles that for the Osage census, but the date are much more accurate. There are 31 percent in Osage County, 27 percent in other parts of Oklahoma, and 42 percent outside the state.

Since headrights usually pass by inheritance, elder persons predominate—25 percent are 61 or older, and 68 percent are 41 or older. Headright owners tend to feel, though not unanimously, that exclusion of younger members of the family from the headright was not a major problem because parents could and did share the income. The Osages interviewed supported voting rights for younger Osages more than income rights.

3. In June 1970 the tribal council was elected by headright owners as prescribed by statute, to serve from July 1970 to June 1974.

4. Dissension in the tribe centers in two relatively small groups. The basic issues are the powers of the council beyond the mineral estate, eligibility for voting and holding office and the resulting effect on the representativeness of the council and judgment fund distribution. The two groups are:

(a) *Osage Nation Organization (ONO).* Their leaders include Charles Lohah (whom the deam did not see), LeRoy Logan, Raymond Lasley, and Hazel Harper. Their basic

principle is control by persons of one-quarter or more Osage blood, regardless of headright interest. They view the present council as essentially a business committee representing only mineral affairs. All other Osage affairs should be under a different council elected by Osages. Similarly, the judgment distribution should be to descendants of one-quarter Osage blood or more, rather than being based on headrights and the 1906 roll which they feel included many persons of little or no Osage blood. ONO has an Oklahoma charter, a constitution, and by-laws, which were provided to the evaluation team. They have developed a program plan, copies of which have been given to Commissioner Bruce, and before him to Commissioner Bennett. They claim 800 members, but others dispute this. The Osage census lists about 2,500 persons with one-quarter or more Osage blood out of a total of 8,200. Although many of the ONO group have headrights, their general support must lie outside judging from the 1970 election in which Logan and Lasley ran last in a field of 14 candidates for councilman, receiving votes equal to 250 headrights. Such a vote from headright owners is not surprising considering that many of them have less than one-quarter Osage blood.

(b) *Osages for Action Organization (OAO)*. Joe Shunkamolah is leader of this active but apparently small group. It is centered at Hominy. They feel the Council and the Agency are mismanaging tribal funds and are not furnishing information on the transactions. Accordingly, they want the tribal council suspended or removed, the Superintendent rotated, and a GAO audit of the Agency, particularly trust money. While they favor an Osage blood quantum requirement, the ONO group refuses to be associated with OAO. The OAO program was not made clear to the evaluation team, except for removal of incumbent officials and judgment distribution.

In response to OAO charges, the team determined that GAO conducts an audit of the Agency every two years, the latest in June 1970 with no adverse findings. Another issue, concerning the investment of mineral royalties while waiting for the quarterly distribution, is controlled by Federal regulations for trust money and is under BIA rather than the Council. The reasonableness of expenditures by the Council for its own activities is a matter of judgment, but less than one percent of the mineral receipts for this purpose does not seem excessive to the evaluation team.

The charge of inadequate information about Council business has substance and may partly explain other charges, or the acceptance of such charges by the Osages, as based on lack of information. The Council has no constitution or by-laws. Its sessions are recorded on tape, but this not transcribed, and the only minutes are summaries prepared by the Superintendent's secretary, an Osage who sits as secretary to the tribal council in open meetings. Closed meetings are held on occasion, but the bulk of the meetings are open. Tribal financial accounts are kept by the BIA, and an annual report is made to headright owners, but it appears that the monthly tribal account reports are made available only to headright owners on request.

In interviews the team held with individual Osages, a predominant attitude was that OAO was a small group that did not represent any considerable group of Osages, that it had publicity beyond its importance (partly as the result of the Commissioner's meeting), and was critical, but not constructive. Even some Indians who attended the Hominy meetings made such comments in private. Associated with this was frequently the comment—the Council was elected; now let them do their work and quit harassing them. On the other hand, in the June 1970 election, Joe Shunkamolah, who was one of two candi-

dates for Assistant Principal Chief, received 40 percent of the headright vote for that office.

D. Other Indians in Osage County

It is estimated that about one-half the Indians in Osage County are not Osage. Many come from other Oklahoma tribes. It is safe to say that until the last few years these Indians, along with Osages who had no headright or trust land, received almost no services from the Agency.

Now the Agency has other programs, such as employment assistance, social services, and scholarships, that are available to Indians regardless of tribal or trust status (although there may be an Indian blood quantum requirement).

The staff members concerned with these programs make a point of serving all eligible Indians; however, the fact that they are eligible may be unknown to many Indians because of the long history of the Agency in serving only Osages with trust interests.

E. BIA agency

1. *Rotation*. Most Osages interviewed objected in principle to rotation every two years because it takes longer for a Superintendent to learn the situations so he can make a contribution. Support for the present Superintendent (Pappan) was extensive. Typical remarks, heard over and over again, were: "He is the best superintendent we have had in years. He understands Indians and really tries to help." The Agency staff also got good marks in general.

OAO definitely wants the present Superintendent rotated, and ONO is agreeable to rotation.

2. *Takeover*. The tribal council is not interested in takeover; quite the reverse. They want the BIA to take over funding of the remaining programs which the tribe is supporting, and feel that any takeover proposal by the tribe might jeopardize this goal. Very few interviews commented on tribal takeover.

3. *Tribal involvement with 1973 Program Memorandum*. The council was satisfied with their involvement. At a council meeting, the Superintendent and Agency branch heads explained their programs and proposals. Meetings were also held with individual council members concerned with a particular program area. The Agency and the council maintain close cooperation in the operating program.

4. *Indian Business Development Fund*. There were 7 applications received. Of these, 5 were funded at the Agency for a total of \$14,100 as follows:

\$4,800 Bates Shaw for leasing and managing tribal golf course.

\$3,000 Raymond Redcorn for a food processing facility.

\$2,500 Aaron Bighorse for a gas station lease and inventory.

\$2,000 George-Ann Robinson to expand Indian craft shop.

\$1,800 Lillie Page McGuire to expand beauty shop.

One project received from Osage Indians was outside the Agency jurisdiction and was funded from the Central Office. The amount was \$13,800 for a haberdashery shop in Albuquerque.

One project was disapproved because outside financing failed. It concerned a gas station, but the gas company rejected the lease because the applicant wanted to have his son run it for him.

Additional inquiries have been received, and the Superintendent felt that eligible projects would be available in 1972, even through \$4,000 of the 1971 money was returned to the Central Office.

5. *Employment of Indians in Osage Agency*. Of the 38 permanent BIA employees, 25 (66%) are Indians. Fifteen are Osage and 10 are from other Oklahoma tribes.

The distribution by grade is:

	Indian	Non-Indian
Grade:		
14	1	1
13		5
12	1	4
11	3	
9	1	
8	1	
7	2	
6	1	
5	6	2
4	5	
3	3	
Wage Board	1	1
Total	25	13

6. *Questionnaire for BIA employees*. Each permanent classified BIA employee was asked to complete a confidential questionnaire and return it to the team in a sealed envelope. The envelopes were opened in Washington and the answers were tallied. Highlights of the returns follow:

There were 32 respondents (91% of the 35 eligible, not counting the Superintendent): Median age, 47 years.

Average service in BIA, 15 years.

Average Federal service, 16½ years.

Do you plan to continue working for BIA? 94% yes.

Do you like working for BIA? 78% yes; 22% so-so; 0% no.

How would you rate employee morale at the Agency? 34% good; 52% indifferent; 14% poor.

Do you think your fellow workers are satisfied with the opportunity for promotion in the Bureau? 34% more yes; 63% more no; 3% no answer.

Formal training in last 12 months? 38% yes.

Could you do better job with more training? 94% yes.

Are you satisfied with training opportunities offered by and through the Bureau? 47% more yes; 53% more no.

Does job description show what work you do? 100% all or most.

Is person who tells you what to do most of the time shown as your supervisor in your job description? 97% yes.

Are you ever idle because you have no work to do? 73% seldom or never.

7. *HM Accounts*. For many restricted Osages, contact with the Agency centers on their HM accounts, consisting mainly of head right payments and agricultural lease rentals. There are special statutes for Osages, including Agency approval of individual expenditures above a certain basic allowance, and budgets where the Agency considers it necessary. A system of advance commitment of quarterly headright payments exists, whereby banks and merchants advance credit to Indians with Agency approval (purchase order) against the next headright payment, which the Agency in due course pays directly to the merchant. Some Indians regularly commit 80 percent (the maximum) of their headright in advance and are wired into a cycle that is hard to break. The banks and merchants are charging regular interest rates against what are really secured loans.

On its face the system smacks of undue paternalism. However, in the interviews only a few complaints were made—for example, that some Indians were afraid to come to the Agency to ask about their accounts (although less so than formerly), that information about one's account was not provided (a ledger on each account is sent out each January but had not gone out when we were there), and that one person was treated like a baby.

On the other hand, inability of some Osages to manage their funds was frequently mentioned, and alcoholism is a significant problem among Osages which may be restrained by HM controls.

8. *Time Sheets*. On three different occa-

sions Indians complained about some BIA staff members keeping their own time sheets. These were not specified, except for one in the Administrative Services branch. Another complaint concerned moonlighting by a BIA employee who had an accounting business downtown (we were informed later that written permission had been given and the time was being watched).

F. Other agencies

1. *Health.* Indian Health Service provides biweekly clinics at the Agency, there are community health representatives, and hospital services at Pawnee. Diabetes, alcoholism, and mental health are reported as problems. There is a difference of opinion between the tribe and IHS on who should fill a vacant doctor slot at Pawnee.

2. *OEO.* The Osage Tribe is sponsor of the NYC program, which serves Indians and non-Indians in a number of counties. The program was one of the first in the country and is regarded as a model. The tribe is pleased with other OEO services.

3. *Other agencies.* Relations appear to be generally good with county welfare, police, and public schools. On the other hand, there was a tendency to see the following as non-cooperative with Indians: local banks, courts and lawyers, and cattlemen.

RECOMMENDATIONS

1. The BIA is currently defining its trust responsibility. We recommend that when this is completed, the BIA should plan to take over funding of Agency activities now funded by the tribe which fall within the scope of the trust responsibility as defined.

2. We recommend that the BIA expedite the review and adoption of the new oil and gas regulations for Osage.

3. We recommend assistance to the tribal council in establishing Osage water rights.

4. The present tribal council for the Osage Tribe was established by a 1906 Statute which provides for the election of a tribal council by headright share holders. There are many questions today as to the validity of the original roll which was created under the 1906 Statute. As it presently stands, it would be futile to challenge the roll. Aside from the questions which were raised as to the original roll, part of the dividedness which exists among the tribal members is the allegation that the present tribal council is not in fact truly representative of the Osage Tribe. In some respects these allegations may have merit. The 1906 Statute franchised the original headright holders but the present devolution of headright shares has caused the vote to become fractionalized, and further the headright voting system has created the condition where a proportion of Osage Indians who may be of one-quarter blood or more, but who do not own a headright interest, cannot therefore vote for the tribal council.

The present tribal council procedurally elected under the method delineated by the 1906 Statute is actively seeking to expand its functions in areas other than the mineral trust interest. These areas are education, housing, employment, and economic development. However, under the Statute the tribal council's powers are limited to actions taken within the purview of the mineral trust estate.

The tribal council now finds itself in a legal quandary since their powers under the Statute are limited to the mineral trust estate but the needs of the Osage Tribe certainly extend beyond the mere management of that estate. The tribal council has recognized the shortcoming, but has not as yet accepted the limitation of the Statute and the lack of a formal constitution and by-laws. It finds itself in a legal dilemma since the tribal council enjoys the majority support of the headright holders while at the same time it may not necessary enjoy the

majority of the non-headright holders who are Osage Indians.

The Evaluation Team did discuss this situation with the tribal council and it is our present recommendation that the Commissioner consider presenting to the council various alternative methods to provide equal representation among all the Osage Indians, headright as well as non-headright holders. For instance, this could be accomplished by diverting the mineral trust estate from the general functions normally embodied in a tribal council by separating the mineral estate through a corporate trust structure and by establishing a tribal government governed by a constitution and by-laws. Another method could be to provide for an expansion of the tribal council and to allow the new members to be elected by the entire community while at the same time preserving the integrity of the mineral estate by the continuation of the present tribal council operation. These are not exclusive recommendations and they should be considered merely for discussion purposes. The underlying purpose of this recommendation is for the Commissioner to consider various alternatives which could be presented to the present governing body whereby representation of this unfranchised Osage Indians could obtain representation on a tribal governing body.

5. The Agency has only recently begun to offer programs in the community services sector, and these may not yet be effectively reaching eligible non-Osage Indians living in the county. Although the BIA role is largely coordination, advice, and referral in such fields as social services, education, and housing, we judge that additional services are needed. We recommend that BIA strengthen its support in these fields. The eligibility of all Indians in Osage County needs to be emphasized, as there appears to be misunderstanding on this point despite the efforts of BIA staff concerned.

6. Present legislation bars Indians in Osage County from BIA credit services available to Indians in other parts of Oklahoma. We recommend legislation and other necessary action to extend credit services to Indians in Osage County on the same basis as to other Indians in Oklahoma. If legislation cannot be filed forthwith, the BIA should assist the tribe in obtaining and/or establishing other credit sources, such as credit unions.

7. In accordance with Indian wishes and need, we recommend that BIA support legislation to improve the protection of Osage Indian interests during probate and similar actions.

8. Considerable misunderstanding of the handling of trust money was evident. We recommend Agency efforts to improve communication with the Indians on these matters, including (a) explanation of the procedure and regulations for handling trust receipts pending the quarterly distribution, the interest received, etc., (b) quarterly reports on the amounts of mineral receipts and disbursements by object to be printed and available to the public, and (c) distribution of IIM ledgers more than once a year, to be accompanied by an explanation of the procedures employed and the meaning of entries on the sheet.

9. The council apparently operates without official minutes or formalized by-laws of procedures. Because of the importance of its actions, we suggest that the council consider formalizing its operating procedures, establish official minutes, and make them available to the public upon request.

10. In view of the many discrepancies with regard to the handling of the Osage estates and other legal affairs by the private attorneys of Pawhuska, it is recommended that the Bureau, in cooperation with the Office of Hearings and Appeals of the Department of the Interior, review the procedures for descent and distribution of Osage

Indian trust or restricted estates and determine what steps need to be taken to more fully protect the members of the Osage Tribe from the possibility of unscrupulous actions.

11. Recommend further evaluation of the petroleum engineer position with respect to the incumbent's effectiveness in his relationships with the tribe.

12. Recommend the Agency examine current procedures for keeping time records and institute needed changes, if any are called for.

13. The tribal council and a large proportion of the individual members of the tribe indicated that they would prefer to keep the present Superintendent in his post so that the overall Bureau program can be expanded and developed. One concern seems to be that the Superintendent should remain in his position with the Osage Agency until the Judgment legislation has been enacted. It is the recommendation of the evaluation committee that the tribal council be consulted and that its wishes be taken into account.

By Mr. MAGNUSON (by request):

S. 3399. A bill to amend the provisions of title 14, United States Code, relating to the flag officer structure of the Coast Guard, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, at the request of the Department of Transportation, I introduce a bill relating to the flag officer structure of the Coast Guard.

I ask unanimous consent that a copy of the bill together with a letter of transmittal from the Secretary of Transportation be printed at this point in the RECORD.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

S. 3399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 14, United States Code, is amended as follows:

(1) The first sentence of section 41 is amended by striking out "a vice admiral" and inserting in lieu thereof "vice admirals".

(2) The first sentence of subsection (e) of section 42 is amended by inserting the words "or excluded under the provisions of section 9(d)(1) of the Department of Transportation Act" between the words "basis" and "shall".

(3) The second sentence of section 44 is amended by striking out the words "in the grade of captain or above" and inserting in lieu thereof the words "above the grade of captain".

(4) Section 47 is amended by striking out the word "Assistant" wherever it appears preceding the word "Commandant" and inserting in lieu thereof the word "Vice"; by striking out the words "in the grade of captain or above" in the second sentence of subsection (a) and inserting in lieu thereof the words "above the grade of captain"; and by striking out the word "An" in subsection (b) and inserting in lieu thereof the word "A".

(5) By adding the following new sections at the end of Chapter 3:

"§ 50. Area Commanders.

"(a) The President may appoint, by and with the advice and consent of the Senate, a Commander, Atlantic Area, and a Commander, Pacific Area, each of whom shall be an intermediate commander between the Commandant and the district commanders in his respective area and shall perform such duties as the Commandant may prescribe. The area commanders shall be appointed from officers

on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendations for such appointments.

"(b) An Area Commander shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment of an area commander is effective on the date the officer assumes that duty, and terminates on the date he is detached from that duty.

"§ 51. Retirement.

"(a) An officer who, while serving as Commander, Atlantic Area, or Commander, Pacific Area, is retired for physical disability shall be placed on the retired list with the grade and retired pay of vice admiral.

"(b) An officer who is retired while serving as Commander, Atlantic Area, or Commander, Pacific Area, or who, after serving at least two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the grade and retired pay of vice admiral.

"(c) An officer who, after serving less than two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade and with the retired pay of that grade."

(6) The first sentence of section 287 is amended by striking out the word and figures "or 289" and by inserting in lieu thereof the word and figures "289, or 290".

(7) Section 290 is amended to read as follows:

"§ 290. Rear admirals; continuation on active duty; involuntary retirement.

"(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral who have not previously been considered for continuation in that grade. Officers serving for the time being or who have served in the grade of vice admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued in the grade of rear admiral. A board shall consist of at least five officers serving in the grade of vice admiral or as rear admirals previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral is subject to consideration for continuation during a fiscal year in which he completes not less than four or more than five years service in that grade.

"(b) The Secretary shall, based upon the needs of the service, furnish each board convened under this section with the number of officers to be considered for continuation on active duty. The number that may be recommended for continuation shall be not less than 50 percent or more than 75 percent of the number of officers being considered for continuation.

"(c) The provisions of sections 253, 254, 258, and 260 of this title relating to selection and continuation boards shall to the extent they are not inconsistent with the provisions of this section, apply to boards convened under this section.

"(d) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After his final review the Secretary shall submit the report of the board to the President for his approval.

"(e) Each officer who is considered, but not continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the fiscal year in which the report of the continuation board convened under this section is approved.

"(f) Each officer who is continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the fiscal year in which he completes a total of 36 years of active commissioned service, including service creditable for retirement purposes under sections 432, 433, 434 of this title.

"(g) Notwithstanding subsection (f) of this section, the Commandant, with the approval of the Secretary, may by annual action retain on active duty from fiscal year to fiscal year any officer who would otherwise be retired under subsection (f). An officer so retained, unless retired under some other provision of law, shall be retired on June 30 of that fiscal year in which no action is taken to further retain him under this subsection."

(8) The analysis of chapter 3 is amended by inserting the following new items:

"§ 50. Area Commanders.

"§ 51. Retirement."

(9) The analysis of chapter 11 is amended by striking out:

"290. Rear admirals; retention on the active list; involuntary retirement."

and inserting in lieu thereof:

"290. Rear admirals; continuation on active duty; involuntary retirement."

Sec. 2. Subsection (f) of section 202 of title 37, United States Code, is amended to read as follows:

"(f) The number of rear admirals on the active list of the Coast Guard entitled to the basic pay of a rear admiral of the upper half is one-half of the number of officers on the active list in grades above captain, less the number of officers serving in grades above rear admiral. If the division results in an odd number, the odd number shall be placed in the upper half. However, an officer who is entitled to the basic pay of a rear admiral of the upper half may not have his basic pay reduced solely because the number of rear admirals is reduced.

INTERIM PROVISIONS

Sec. 3. This Act is effective upon enactment except that continuation boards pursuant to subsection (a) of section 290 of title 14, United States Code, as amended by this Act, may not be held until one year following enactment hereof. During the period of one year following enactment hereof the Secretary of the Department in which the Coast Guard is operating shall convene a board consisting of not less than three Coast Guard officers serving in the grade of vice admiral to recommend for continuation on active duty Coast Guard officers on the active duty promotion list serving in the grade of rear admiral, who during the fiscal year in which the board meets will complete not less than five years service in that grade. Subsections (b) through (g) of section 290 and other sections of title 14, United States Code, as amended by this Act, apply to continuation board action taken pursuant to this section. No officer who is entitled to the basic pay of a rear admiral of the upper half may have his basic pay reduced because of the reduction which results from this Act in the number of officers entitled to the basic pay of a rear admiral of the upper half.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 25, 1972.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

Identical letter to:

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a proposed bill.

"To amend the provisions of title 14, U.S. Code, relating to the flag officer structure of the Coast Guard, and for other purposes."

The proposed bill would make changes in the personnel provisions of title 14, United States Code, relating to the Coast Guard, and a related change in title 37, United States Code, relating to pay and allowances. Principally, these changes would require periodic continuation boards to recommend officers serving in the grade of rear admiral for continuation on active duty; establish the statutory positions of Commander, Atlantic Area, and Commander, Pacific Area, and authorize the grade of vice admiral for appointees; and effect related technical changes in other sections of title 14.

Under existing law, Coast Guard officers selected to the grade of rear admiral continue to serve in that grade until they complete seven years in grade or a total of thirty-five years commissioned service, whichever occurs earlier. At that time they are subject to involuntary retirement. The system has several deficiencies. At no time during his tenure in flag grade is an officer's performance subject to formal review as, for example, for identification and retention of the best qualified flag officers and possible separation of those not as well qualified. The inflexibility of a system which requires retention for a fixed period of each officer selected to flag grade, regardless of his performance, has impeded uniform promotion flow, and makes necessary an adequate management tool for presenting reasonably comparable selection opportunity to officers becoming eligible for selection to flag grade. The present system also discourages early selection of especially capable officers to flag grade. The seven-year limitation in grade makes selection to flag grade before the twenty-eighth year of service inefficient and somewhat imprudent because early selection forces retirement of such officers before completion of thirty-five years total service.

The proposed bill would require the periodic convening of a continuation board comprised of more senior officers to recommend for continuation on active duty not fewer than fifty percent nor more than seventy-five percent of rear admirals when they reach the approximate midpoint of average service in flag grade. Officers would only be subject to continuation board consideration a single time. Those not selected for continuation would be retired. The officers to be retired would have not more than five years in flag grade and would probably average a total of about thirty-two years commissioned service. Officers selected to continue on active duty, the better performers, would continue to serve until the completion of thirty-six years commissioned service. The removal of the seven years in grade limitation would assure that the early selection to flag grade of an especially capable officer would not have the adverse side effect of shortening his total career.

Another problem with which the Coast Guard has been faced under the present system, and which study shows will be aggravated in the future, is the rather severe variation in flag selection opportunity on a year-to-year basis. The annual opportunity is a function of several variables not now subject to management control. A significant factor is flag officer attrition uncontrolled except by the statutory "thirty-five years service or seven years in grade" limitation. The proposed bill, to the extent that it permits utilization of a controlled forced attrition of flag officers, will provide a significant capability to make the number of new flag officers that can be selected each year relatively uniform.

Under the existing organizational structure of the Coast Guard, the Coast Guard is divided into twelve districts, each headed by a district commander. In addition, districts on the East coast have been administratively grouped under a Commander, Eastern Area. Similarly, districts on the West coast and those encompassing Alaska and the mid and western Pacific have been grouped under a Commander, Western Area.

An area commander has important responsibilities beyond those of the district commanders. The planning, control, and support of operations requiring positive action to coordinate the forces and facilities of more than one district fall within his purview. He is primarily responsible for the organization of zones in his area for search and rescue, for the ocean-station program, for the mobilization planning and operational readiness of the districts within his area, for the communications network of the area, and he is the direct representative of the Commandant in matters involving planning and liaison with the heads of the other armed forces within his area.

The proposed bill would recognize the importance of areas and their commanders by providing a statutory basis for establishing areas and authorizing the grade of vice admiral for officers while serving as area commanders. The names of the areas would be changed to Atlantic Area and Pacific Area to reflect more accurately the geographic fields of responsibility.

Enactment of this proposal does not increase the number of Coast Guard flag officers which may be appointed under existing law. This proposal will, however, create for the first time a pyramidal flag officer structure which will parallel the existing pyramidal structure currently in effect for grades below rear admiral. A proposed change to title 37 will require that the number of rear admirals entitled to basic pay as rear admirals of the upper half will be reduced by the number of officers serving in grades above rear admiral. The change aligns the Coast Guard with Navy in this regard and contributes to a pyramidal structure by assuring that the number of rear admirals of the upper half will be less than the number of rear admirals of the lower half.

The essence of our proposal with regard to area commanders is contained in the proposed new sections 50 and 51 of title 14. To the extent that was possible, the substance and the form of expression used in related or similar provisions in title 14 was followed. For example, section 51 which deals with the retirement of vice admirals closely parallels existing subsections (b), (c) and (d) of section 47 which governs the retirement of the single Coast Guard vice admiral now authorized—the Assistant Commandant. The proposal would, therefore, make the law governing retirement of Area Commanders the same.

The principal operative provisions proposed regarding continuation of rear admirals are contained in the amended section 290 of title 14. The substantive approach, as well as the language, parallels the existing law in section 289, which relates to continuation boards for captains, to the fullest extent that provisions of the latter section could appropriately be made applicable to continuation of rear admirals.

The remaining provisions of the proposed legislation are technical changes to accommodate the major substantive changes, refinements in existing language, or minor substantive changes. An interim provision is included which will assist in the transition to an officer personnel scheme which includes continuation boards for rear admirals. The interim provision provides for an initial continuation board to consider all rear admirals with five or more years service at the time of enactment. The degree of forced attrition will be within the same limits as specified for the regular continuation boards which will follow after the first year following enactment of the proposal.

Enactment of the proposed legislation will lead to improved and more effective management of the resources of the Coast Guard and will recognize the stature of senior officers and the growth of the Coast Guard in numbers and responsibilities in recent years.

When compared to existing authority for

officers above the grade of captain, this proposed legislation will cost about \$7,000 more annually. The figure reflects the higher pay and allowances of two rear admirals to be appointed to the grade of vice admiral.

A comparative type showing changes in existing law made by the proposed bill is enclosed.

It would be appreciated if you would lay the proposed bill before the Senate. A similar bill has been transmitted to the Speaker of the House of Representatives.

The Office of Management and Budget had advised that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

COMPARATIVE TYPE SHOWING CHANGES IN EXISTING LAW MADE BY THE PROPOSED BILL

(Matter proposed to be omitted is enclosed in brackets; new matter is underscored)

TITLE 14

§ 41. Grade and ratings.

In the Coast Guard there shall be an admiral; [a vice admiral] *vice admirals*; rear admirals; captains; commanders; lieutenant commanders; lieutenants; lieutenants (junior grade); ensigns; chief warrant officers, W-4; chief warrant officers, W-3; chief warrant officers, W-2; cadets; warrant officers, W-1; and enlisted men. Enlisted men shall be distributed in ratings established by the Secretary.

§ 42. Number and distribution of commissioned officers.

- (a) * * *
- (b) * * *
- (c) * * *
- (d) * * *

(e) Officers who are not included on the active duty promotion list, officers serving as extra numbers in grade under sections 432 and 433 of this title, and officers serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 9(d)(1) of the Department of Transportation Act shall not be counted in determining authorized strengths under subsection (c) and shall not count against those strengths. The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy, of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components, and of the Women's Reserve shall be prescribed by the Secretary.

§ 44. Commandant; appointment.

The President may appoint, by and with the advice and consent of the Senate, one Commandant for a period of four years, who may be reappointed for further periods of four years, who shall act as Chief of the Coast Guard. The Commandant shall be appointed from the officers on the active duty promotion list serving [in the grade of captain or above] *above the grade of captain* who have completed at least ten years of active service as a commissioned officer in the Coast Guard. The Commandant while so serving shall have the grade of admiral.

§ 47. [Assistant] Vice Commandant; assignment; retirement

(a) The President may appoint, by and with the advice and consent of the Senate, one [Assistant] Vice Commandant who shall rank next after the Commandant, shall perform such duties as the Commandant may prescribe and shall act as Commandant during the absence or disability of the Commandant or in the event that there is a vacancy in the office of Commandant. The [Assistant] Vice Commandant shall be selected from the officers on the active duty promotion list serving [in the grade of captain

or above.] *above the grade of captain*. The Commandant shall make recommendation for such appointment. The [Assistant] Vice Commandant shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment of [an Assistant] a Vice Commandant shall be effective on the date the officer assumes such duty, and shall terminate on the date he is detached from such duty.

(b) A [n] [Assistant] Vice Commandant, while so serving, who is retired for physical disability shall be placed on the retired list with the grade and retired pay of vice admiral.

(c) An officer who is retired while serving as [Assistant] Vice Commandant, or who, after serving at least two and one-half years as [Assistant] Vice Commandant, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade and retired pay of vice admiral.

(d) An officer who, after serving less than two and one-half years as [Assistant] Vice Commandant, is retired after completion of that service while serving in a lower rank or grade, shall be retired in his permanent grade and with the retired pay of that grade.

§ 50. Area Commanders.

(a) The President may appoint, by and with the advice and consent of the Senate, a Commander, Atlantic Area and a Commander, Pacific Area, each of whom shall be an intermediate commander between the Commandant and the district commanders in his respective area and shall perform such duties as the Commandant may prescribe. The area commanders shall be appointed from officers on the active duty promotion list serving above the grade of captain. The Commandant shall make recommendations for such appointments.

(b) An area commander shall, while so serving, have the grade of vice admiral with pay and allowances of that grade. The appointment of an area commander is effective on the date the officer assumes that duty, and terminates on the date he is detached from that duty.

§ 51. Retirement.

(a) An officer who, while serving as Commander, Atlantic Area, or Commander, Pacific Area, is retired for physical disability shall be placed on the retired list with the grade and retired pay of vice admiral.

(b) An officer who is retired while serving as Commander, Atlantic Area, or Commander, Pacific Area, or who, after serving at least two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, may, in the discretion of the President, be retired with the grade and retired pay of vice admiral.

(c) An officer who, after serving less than two and one-half years in the grade of vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade and with the retired pay of that grade.

CHAPTER 11—PERSONNEL

§ 287. Separation for failure of selection for promotion or continuation; time of.

If, under section 282, 283, 284, 285, [or] 289, or 290 of this title, the discharge or retirement of any officer would be required less than six months following approval of the report of the board which considered but did not select him for promotion or continuation, the discharge or retirement of such officer shall be deferred until the last day of the sixth calendar month after such approval.

§ 290. Rear admirals; [retention on the active list] continuation on active duty; involuntary retirement.

[(a) Any rear admiral, unless retired under some other provision of law or retained on active duty under subsection (b) of this section, shall be retired on June 30 of the fiscal year in which he completes a total of seven years of service in the permanent grade

of rear admiral or a total of thirty-five years of active commissioned service, including service creditable for retirement purposes under sections 432, 433, and 434 of this title.

[(b) Notwithstanding subsection (a) of this section, the Commandant, with the approval of the Secretary, may by annual action retain on active duty from fiscal year to fiscal year any rear admiral who would otherwise be retired under subsection (a). A rear admiral so retained, unless retired under some other provision of law, shall be retired on June 30 of that fiscal year in which no action is taken to further retain him under this subsection.]

[(c) Subsections (a) and (b) of this section do not apply to any officer serving as Commandant.]

(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral who have not previously been considered for continuation in that grade. Officers serving for the time being or who have served in the grade of vice admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of his section shall be considered as having been continued in the grade of rear admiral. A board shall consist of at least five officers serving in the grade of vice admiral or as rear admiral previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral is subjected to consideration for continuation during a fiscal year in which he completes not less than four or more than five years service in that grade.

(b) The Secretary shall, based upon the needs of the service, furnish each board convened under this section with the number of officers to be considered for continuation on active duty. The number that may be recommended for continuation shall be not less than 50 percent or more than 75 percent of the number of officers being considered for continuation.

(c) The provisions of sections 253, 254, 258, and 260 of this title relating to selection and continuation boards shall, to the extent they are not inconsistent with the provisions of this section, apply to boards convened under this section.

(d) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After his final review the Secretary shall submit the report of the board to the President for his approval.

(e) Each officer who is considered but not continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the fiscal year in which the report of the continuation board convened under this section is approved.

(f) Each officer who is continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the fiscal year in which he completes a total of 36 years of active commissioned service, including service creditable for retirement purposes under sections 432, 433, and 434 of this title.

(g) Notwithstanding subsection (f) of this section, the Commandant, with the approval of the Secretary, may by annual action retain on active duty from fiscal year to fiscal year any officer who would otherwise be retired under subsection (f). An officer so retained, unless retired under some other provision of law, shall be retired on June 30 of that fiscal year in which no action is taken to further retain him under this subsection.

TITLE 37—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

§ 202. Pay grades: assignment to; rear admirals of upper half; officers holding certain positions in the Navy.

(f) [Except for those whose basic pay is otherwise specifically authorized by law.] The number of rear admirals on the active list of the Coast Guard entitled to the basic pay of a rear admiral of the upper half is one-half of the number of officers on the active list in [that] grades above captain, less the number of officers serving in grades above rear admiral. If [that] the division results in an odd number, the odd number shall be placed in the upper half. However, an officer who is entitled to the basic pay of a rear admiral of the upper half may not have his basic pay reduced solely because the number of rear admirals is reduced.

By Mr. MOSS:

S. 3400. A bill to provide for the issuance of a special series of postage stamps to commemorate the bicentennial of the Escalante Expedition. Referred to the Committee on Post Office and Civil Service; and

S. 3401. A bill to provide for the designation of the Escalante Trail, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MOSS. Mr. President, in 1976 this Nation will be celebrating not only the bicentennial of our birth as a nation at Philadelphia in 1776, but the 200th anniversary of another event far out across the country which helped immeasurably to make our Nation great.

This second event was the expedition that Father Silvestre Valez de Escalante led from Santa Fe to the shores of Utah Lake, opening up the mountains west to European civilization.

The members of the expedition were the first Europeans to view the spectacular regions that now comprise the State of Utah, and the path that they marked through present-day Utah, Colorado, Arizona, and New Mexico blazed the way for traders and others who followed over the route that became known as "The Old Spanish Trail." The impact of this expedition on our history and development cannot be overstated.

I know that we as a nation will be deeply involved in celebrating the bicentennial of our national birth in 1976. That is as it should be, of course. But I hope we will also find time to give a nod to the expedition and the man who wrote such a momentous chapter of the history of the Far West in that same year.

I am introducing two bills today which, if enacted, will assure that the Escalante expedition will not be forgotten.

The first bill authorizes the Postmaster General to issue in 1976 a special series of postage stamps to commemorate the bicentennial of the Escalante expedition, with the series to consist of blocks of four different stamps, each representing that part of the route of the expedition through each of the four States.

The second bill authorizes the Secretary of the Interior to enter into agreements with the appropriate officials of the four States—Utah, New Mexico, Arizona, and Colorado—to encourage them

to designate the route of the expedition as the Escalante Trail, and to erect or place appropriate markers along the route.

Mr. President, I find Americans becoming more and more interested in our history which has shaped the country in which we live, and I feel there will be tremendous desire in 1976 on the part of the people of the four States involved, as well as of people throughout the country, to relive and reenact the story of the Escalante Expedition.

The story begins in New Mexico, land of the Pueblo Indians and of the Spanish pioneers of the Southwest. Early in 1775 the Governor of that province, writing from his capital at Santa Fe, asked Father de Escalante, Franciscan missionary at Zuni, for a report regarding communication between New Mexico and Sonora; the possibility of opening a road between New Mexico and Monterey, capital of the newly founded missions in California; and the subjugation of the Moquinos, or Hopis, who, having long been hostile to Spanish authority and to Christian missionaries, were an obstacle to the desired communication between Santa Fe and the Pacific coast.

Escalante, a Franciscan friar of great intelligence and unusual ability, had for several years studied and planned to locate a route from Santa Fe to Monterey, by way of the higher latitudes, it being his idea in this way to avoid the vast difficulties of crossing that great chasm, the canyon of the Colorado, as well as the desert regions and the Colorado River itself below the canyon.

In addition to his desire to find a route by way of the higher latitudes, Escalante believed that the Yutas, through whose lands he must pass, were less warlike than the Apaches along the southern land route. The Apaches in the area adjoining the Gila River and the lower Colorado River had proved themselves very bold and warlike. They had attacked the Spaniards with great skill and cleverness, and had been successful in running off and stealing many of their horses and cattle, much of their equipment and provisions, and in wounding and killing many of the Spaniards and their followers.

To obtain data for the report, Escalante with a small party made a horseback journey from Zuni to Hopi land, keeping a detailed diary regarding the trail and affairs at the now famous Hopi mesas of Arizona. The primary purpose of his trek was to inquire about a route to Monterey by way of the great river of the Cosninas—Havasupais—which I judge to be the Colorado.

At the Hopi pueblos the people were sullen, but Escalante was able to interview one young Cosnina who was visiting there. The Indian told Escalante about his homeland in the West and made him a map of the trail from Oraibe to the Cosnina settlement in Havasupai Canyon, showing the turns, the days' journeys, watering places, villages, the size of the country, the course of the Colorado River, and neighboring tribes.

A Spaniard by birth, Escalante came from Spain to New Mexico in 1768. He

taught Christian doctrine in the Mission of Our Lady of Guadalupe of Zuni, N. Mex., and he was in charge of this mission. He was a remarkable man in many ways. He had traveled extensively through, and had resided in many parts of New Mexico and Arizona, and was, therefore, well acquainted with this region.

After presenting and urging his plans for several years to the Governor of New Mexico and to the Provincial Minister of the Franciscans, Escalante succeeded in persuading the Governor, in 1776, to sponsor and finance such an expedition, with Francisco Atanacio Dominguez heading the expedition, accompanied by Escalante and Don Bernardo de Miera y Facheo, a well-known surveyor and mapmaker, who was to make a map of the land they might go through along with seven other residents of Santa Fe.

Escalante had conceived the idea of the excursion and labored with the civil and church authorities for a considerable period of time until the expedition became a reality. He thus became the actual leader, although his superior, Dominguez, assumed nominal charge. Escalante's name, however, has been handed down through history because of his writings, while Dominguez is seldom mentioned, except as Escalante's associate.

Escalante had proposed to make the journey provided his superiors would give him at least 20 men, but having his heart set on this enterprise, and hoping also to convert and civilize large numbers of pagan Indians, he prepared to set out on the hazardous undertaking with Dominguez and only eight men, fully realizing the great dangers and difficulties such reduced numbers might entail.

For a number of years before the historic Escalante expedition, New Mexico traders had been pushing north into the area that is now Colorado, exchanging Spanish goods for fur pelts. One such expedition in 1765 followed a route from Santa Fe northward to the San Juan River and across the northern spur of the La Plata Mountains in present-day Colorado, northwest down the Dolores River, eastward across the Uncompaggre Plateau and River, and down the latter to the Gunnison. This general route was taken by others in the decade that followed, and thus, by 1776, the region east of the Colorado River and as far north as the Gunnison seems to have been fairly well known. That most of the more important physical features of the country were referred to in the diary of Escalante by names that are still on the map suggests that those names were already in common use at the time.

The historic group that set forth from Santa Fe on Monday, July 29, 1776, numbered 10 persons.

In addition to Escalante, Dominguez, and Miera, who carried an astrolabe and made astronomical observations on the way, the company included Don Pedro Cisneros, alcade mayor of the Pueblo of Zuni; Don Joaquin Lain, also a citizen of Zuni; Lorenzo Olivares of El Paso; the brothers Lucrecio and Andres Muniz, Juan de Aguilar, and Simon Lucero, who bore no official titles and whose residences are not given in the

narrative. Some of these men were chosen because as traders and trappers they had been over part of the trail to the far north. Andres Muniz, who the previous year had been north as far as the Gunnison River and knew the Yuta language, went as interpreter. He proved to be highly important on the expedition, because for most of the way through the regions that are now the States of Colorado and Utah, until after the explorers crossed the Colorado River on the homeward trek, all the Indians spoke dialects of the Yuta tongue.

Although there is no specific statement in the diary on this point, it is probable that Escalante's plan was to follow the trappers' trail northwest past Mesa Verde, descend Dolores River some distance, turn west to Green River and the Colorado, and thence to Monterey through a pass in the High Sierra thought to have been sighted by another intrepid Franciscan explorer in the San Joaquin Valley in California.

The first part of the journey followed this plan. The little party made its way up through what is now western Colorado and turned west along the southern flank of the Uinta Mountains, entering the Utah region near the junction of White River with the present State line. They crossed the Green River, which they called the San Buenaventura, and pressed westward along the Duchesne and Strawberry Rivers, emerging at last into Utah Valley via Spanish Fork Canyon on September 23, after almost 2 months of the most arduous journeying.

Father Escalante was full of praise for this beautiful valley which alone, he said, "would provide for as many pueblos of Indians as there are in New Mexico." He described it in detail:

This lake of Timpanogotzils (Utah Lake) abounds in several kinds of good fish, geese, beaver, and other amphibious animals which we did not have an opportunity to see. Round about it live these Indians, who subsist on the abundant fish of the lake, for which reason the Yutas Sabuaganas call them Come Pescados or Fish Eaters. Besides this food, they gather grass seeds in the plain from which they make stote (porridge), supplementing this by hunting hares, rabbits, and fowls, of which there is a great abundance here. There are also buffaloes not very far to the north-northwest, but fear of the Comanches prevents the Come Pescados from hunting them. Their habitations are chozas or little huts made of willow, of which they also make nice baskets and other necessary utensils. In the matter of dress they are very poor, their most decent garments being a buckskin jacket and long leggings of the same material. For cold weather they have blankets made of the skins of hares and rabbits. They speak the Yuta language, but with notable differences in the accent and in some of the words. They have good features, and most of the men have heavy beards, especially those living farther south. In all parts of this sierra to the southeast, southwest, and west, live a large number of people of the same tribe, language, and docility as these Lagunas, with whom a very populous and extensive province could be formed.

Father Escalante devoted a separate paragraph to Great Salt Lake, of which he heard through the Lagunas but did not see. He wrote:

The other lake . . . covers many leagues and its waters are noxious and extremely salty, for the Timpanois (Timpanogos) assure us that a person who moistens any part of his body with the water of the lake immediately feels much itching.

Miera, in his report to the king, gave an even more glowing description of a Spanish settlement that he envisioned on the shores of Lake Timpanogos, on one of the rivers flowing into it. This he proposed as the chief principal colony of a "New Empire" to be carved from the vast area between the lake and the Gila River; "for," he said:

This is the most pleasing, beautiful, and fertile site in all New Spain. It alone is capable of maintaining a settlement with as many people as Mexico City, and of affording its inhabitants many conveniences, for it has everything necessary for the support of human life. This lake and the rivers that flow into it abound in many varieties of savory fish, very large white geese, many kinds of ducks, and other exquisite birds never seen elsewhere, besides beavers, otters, seals, and some strange animals which are or appear to be ermines, judging by the softness and whiteness of their fur. The meadows of these rivers produce abundant hemp and flax without cultivation.

After resting 3 days at Utah Lake, the party turned southward to look for a pass over the mountains into California, but nowhere did they find any sign of a promising route. While the rest of the group camped along the Beaver River, two men sent out on reconnaissance returned to report that they had found no pass whatever by which to cross the sierra, that it was very rough and high in this direction, and that in front of it there was a wide plain without any pasture or water whatsoever. Meanwhile, the arrival of winter also conspired to make ascent of the mountains impossible. On October 5 Father Escalante wrote:

On the preceding days a very cold head wind from the south had blown fiercely and without ceasing, followed by a snowfall so heavy that not only the peaks of the sierra but likewise all the plains were covered with snow tonight.

At a place they called Santa Brigida, on the Beaver River, the discouraged party decided to abandon the attempt to reach Monterey. Father Escalante wrote:

Winter had already begun with great severity, for all the sierras we were able to see in all directions were covered with snow. The weather was very unsettled, and we feared that before we arrived at our destination the passes would be closed, and we would be delayed for two or three months in some sierra, where there might be no people nor any means of obtaining necessary sustenance, for our provisions were already very low, and so we would expose ourselves to death from hunger if not from cold . . . Therefore, we decided to continue south, if the terrain would permit it, as far as the Rio Colorado, and from there proceed toward Cosnina, Moqui, and Zuni.

Not all the voyageurs were satisfied with this decision. Miera, Lain, and the interpreter Andres Muniz were not convinced that it would be impossible to reach Monterey.

Instead of listening to the force of our arguments, they opposed our views and from then on they were very insubordinate. Everything now was obnoxious to them and

everything insufferably difficult. They talked of nothing but how useless so long a journey would be.

At a point just east of present-day Lund, Utah, the issue was finally settled by casting lots, and it was decided in favor of Cosnina.

Crossing the Virgin River, the Spaniards marched southward, planning to continue in that direction as far as the Colorado River, which they thought could not be far ahead. However, they were advised by Indians in the area that they could reach the Colorado in 2 days, but would not be able to go the way they desired:

Because there was no watering place, nor would we be able to cross the river in this region because it ran through a tremendous gorge (the Grand Canyon), and was very deep, and had on both sides extremely high cliffs and rocks, and finally that from here to the river the terrain was very bad.

The Indians refused to escort the Spaniards to the great river, but offered to lead them south some distance along the foot of Hurricane Fault, and to put them on a trail leading eastward to the Cosninas.

At last, on October 26, the party reached the Colorado at Marble Canyon, but it was not until November 7 that they were able to locate a descent and a ford. In order to lead the horses down the side of the canyon, the men cut steps in a rock with axes for a distance of three varas or a little less—about 10 feet. These steps can still be seen, and the place was named Padre Creek in 1937 when it was shown that the party had forded the river here rather than at the so-called Crossing of the Fathers a mile west. From this point on the Colorado, the fathers and their company proceeded directly to Zuni and Santa Fe.

The impact of the Escalante Expedition is evidenced by the increased Spanish interest in the region following his return. Escalante observed a number of times in his journal that villages and towns could be supported by irrigation along streams, but no attempts at colonization were made, nor was the promised mission sent to the Yuta Indians. The international difficulties in which Spain was embroiled, and the formidable Great Plains and their newly mounted Indians, discouraged formal efforts toward colonial expansion or governmental exploitation of the Utah area. However, sanctioned and unsanctioned trading expeditions between Santa Fe and Utah Lake soon resulted in the well-defined route that became known as the Old Spanish Trail.

Father Escalante's journey of 5 months and nearly 2,000 miles, although it failed in its objective to locate and open a route to Monterey, was nevertheless one of the most important trips of exploration ever made from New Mexico into Colorado, Utah, and Arizona, having far-reaching consequences for these States and the areas adjacent to them. The members of Escalante's party were the first white men to see buffaloes near the Green River, Utah; the first to view Utah's magnificent Mount Timpanogos; the first to view the beautiful Utah Valley and Utah Lake. They were the first white

men to go among and describe many of the mountain Indian tribes, and the first to cross the great gorge of the Colorado River. The story of their epic journey will forever remain one of the most thrilling and momentous chapters in American history.

By Mr. SPONG (for himself and Mr. BEALL):

S. 3404. A bill to amend the Cargo Preference Act of 1954 for certain purposes. Referred to the Committee on Commerce.

Mr. SPONG. Mr. President, the United States is becoming increasingly dependent on the import of foreign oil as a major source of fuel. In 1960, this country imported 1.8 million barrels of oil per day, or 18 percent of our petroleum demand. In 1970, imports of oil rose to 3.3 million barrels per day, or 23 percent of our demand. By 1985, it is estimated that the United States will have to import more than 14 million barrels of oil each day in order to satisfy our domestic demand. In other words, we may, by 1985, be relying on foreign sources for nearly 60 percent of our petroleum.

The problem presented by our increasing reliance on imports is complicated by the deterioration of the American-flag tanker fleet. As of January 1, 1972, the world tanker fleet totaled more than 190 million deadweight tons. Yet the U.S. fleet was only 7.6 million deadweight tons, or 4 percent of the total, and these few ships were engaged only in domestic tanker operations. In addition, 11 percent of our total fleet, or better than 850,000 deadweight tons, was laid up. Within a few months, prospects are that a minimum of 1.5 million deadweight tons will be laid up, including many of our newest and most modern vessels.

The situation thus presented is that on the one hand the United States has an increasing need for the tanker carriage of foreign oil to our country and on the other hand our tanker fleet is dwindling in size and wasting away in idleness. The reason is that no oil is being carried from foreign sources to our country aboard American-flag tankers.

If this situation continues, we will be faced with a situation in which we will be dependent on foreign sources for our supply and dependent on foreign sources for the transportation of our supply. Such a dual dependency doubles the risk that in the future, we will not receive the energy supply we require. While we probably cannot help but become more dependent on foreign oil, we can and should prevent total dependency on foreign sources for the carriage of this energy.

It is for this reason that I am introducing legislation on behalf of myself and Senator BEALL to amend the Cargo Preference Act of 1954 to require that a minimum of 50 percent of our oil imports be carried on U.S.-flag vessels.

This provision would automatically provide for a buildup in the U.S.-flag tanker fleet. New jobs would be provided for thousands of Americans in shipbuilding and allied industries and in seafaring, thus helping to alleviate our country's

unemployment problem. The companies involved in shipping the oil would be American corporations paying taxes to our Government on their profits.

Militarily, modern mechanized armed forces depend heavily on petroleum products to function. Supplying this need, or logistical support, is becoming more and more the responsibility of the privately owned merchant fleet. As Rear Adm. G. H. Miller stated in the February 1972, issue of Sea Power:

Shipbuilding budgets have been insufficient in recent years to maintain an adequate Navy. Thus, with the compelling need to modernize its aging combat fleet, the Navy must turn to the U.S. Merchant Marine for an increasing proportion of the logistic support required by the combat fleet. An adequate U.S. Merchant Marine would provide a large reservoir of ships, which could be converted quickly to logistic support functions.

This legislation would help to insure that the United States has a merchant marine which could function as the Nation's fourth arm of defense.

The use of U.S.-flag vessels to carry oil will also assure the American public that this potentially dangerous and polluting cargo will be carried in the safest, most ecologically conscious manner possible. Legislation can be passed to prohibit harmful operating procedures, but such laws are difficult to apply to a foreign-flag vessel. In addition, enactment of this legislation would have a beneficial effect on our balance of payments. For every dollar spent on petroleum transport without this legislation, about \$0.52 would go and stay abroad. With the 50-50 amendment, this would be cut to about 26 cents on the dollar, assuming the comparability between United States and foreign costs.

Enactment of this legislation would not make the United States unique in this area. France, Spain, Chile, and Peru have laws which establish quotas for their flag vessels. Japan and other maritime nations strongly promote their merchant fleets through Government policies which achieve the same result as if they had such laws. There has been no retaliation against these countries by the oil producing nations or by other maritime countries. The United States should require that its crude imports be carried in domestic tankers on the same economic and military grounds that caused other nations to adopt that policy.

Testimony before the House Merchant Marine and Fisheries Committee demonstrates that the importation of 50 percent of our oil aboard American-flag tankers will not result in an increase in cost to the consumer.

It is for these reasons that the United States should require that at least 50 percent of our oil imports be carried aboard American-flag tankers. Our national security, our economy, and our environment demand it.

Mr. BEALL. Mr. President, I am pleased to join with the distinguished Senator from Virginia in sponsoring legislation to amend the Cargo Preference Act of 1954. I wholeheartedly concur with the reasons presented by Senator Spong in proposing that a minimum of 50 per-

cent of our oil imports be carried on U.S.-flag vessels.

There are two important aspects of this bill which must be fully considered. One is the impact of this legislation on the American shipbuilding industry. The second is its relationship to our national security.

It has been estimated that by 1985 we will have to import between 12 and 15 million barrels of oil per day from overseas sources. To supply the United States, a tanker fleet nearly equal to that of all of the tanker capacity in the world today will be required.

If the American flag were guaranteed a carriage of at least 50 percent of this vital cargo, between 50 and 75 million deadweight tons of tankers would be needed. The impact on American shipyards, and on the economy as a whole, would be enormous.

The average private shipyard employment for the first 11 months of 1971 was 128,800. This was the lowest figure since 1965. But, the construction of a 50,000 deadweight tons tanker, costing \$14 million, would create jobs for 378 men for a full year. For a 250,000 deadweight ton supertanker costing \$62 million, jobs would be created for 1,674 men for a full year.

So, when discussing the construction of a fleet of hundreds of modern tankers, we are talking in terms of ship construction jobs for thousands of skilled and semiskilled Americans. We are talking about giving Americans who are receiving unemployment compensation and welfare the opportunity to work and to make a worthwhile contribution to our society.

These benefits would also be felt by other segments of our economy. Allied industries—those which provide the materials necessary for ship construction—would be stimulated as production increased. The increase in the purchases of consumer goods and services would bolster the economies of the areas surrounding the shipyards and allied industries.

At the present time, it is difficult to regulate any part of the import oil transportation industry simply because American-flag vessels are engaged in the oil import trade. Our Nation must have an active tanker fleet engaged in transporting at least 50 percent of our oil imports. If this is not accomplished, the U.S. Government must be prepared to relinquish all control and regulatory powers over this entire industry to foreign nations.

There appears to be little choice in becoming more dependent on foreign sources for our supply of this vital and strategic raw material. The one remaining choice is whose transportation facilities will we utilize. Becoming dependent on third party foreign governments for transportation would create a dual dependency problem and would at least double the risk of being shut off from our supply of imported oil.

For example, using a third party nation as a transportation medium could create these problems:

A dispute between the producing exporting nation and the foreign-flag nation could effectively cut off all supply to our Nation.

Management and labor problems in the third party foreign-flag nation. Many of the corporations and labor unions of other nations are very politically oriented. For instance, some foreign-flag vessels crews and the companies themselves, refused to carry U.S. cargoes to Vietnam.

A dispute between our Nation and a third party nation transporting our energy resources could result in a withdrawal of all ships of that nation engaged in carrying oil to our country.

A dispute between our Nation and an international corporation that controls importing into the United States under a weak "flag of convenience." For example, if the United States pressures an international company to improve their safety and pollution standards, the company could instead withdraw its ships from our trade. Thus, we would either be without the supply we need, or else be forced to lower our standards and endanger our environment.

It therefore becomes apparent that in time of crisis, only U.S.-flag vessels can be directly controlled by our Government. In a future oil crisis, all the European-flag vessels currently engaged in transporting oil to the United States would either shift to their own oil trade or be nationalized by their governments. We could not afford to lose these ships, which currently carry about one-third of our imported oil. Yet, our European allies could not afford to let us keep these ships in our service.

Many arguments have been presented to attack the fact that our national security requirements command enactment of this amendment. There has been much testimony before the House Merchant Marine and Fisheries Committee to the effect that the United States can rely on the "effective control" fleet in time of national crises. But the truth of the matter is that the doctrine of effective control has never been put to the test. In other words, we have never been in the position to determine once and for all whether these Liberian-, Panamanian-, and Honduran-flag vessels would be available to the United States. We must have oil to survive as a nation, and we must import our oil. Our national security demands that we know we will be able to have the ships we require. There is only one way to so guarantee, and that is through the use of U.S.-flag vessels.

Another argument presented was that in time of an oil boycott against the United States, the exporting nations would load foreign-flag but not U.S.-flag ships. History has shown that this is not the case. The Department of Interior's Middle East Petroleum Emergency of 1967 contains an excerpt from Esso magazine. That article stated that:

... But, following allegations of Anglo-American participation in the war, all loadings at Arab ports for British and U.S. destinations were refused, while some Arab states placed an embargo on British and U.S.-flag vessels, irrespective of their destination ...

The point is that in time of boycott, the exporting nations would not allow any flag to deliver oil to the United States. All participating nations joined

in the boycott of the country of destination, whereas not all boycotted U.S.-flag vessels. Their argument in opposition to this legislation is therefore meaningless.

President Nixon, in late July 1970, asserted that "we are primarily—a sea power." Virtually surrounded by water, and hardly self-sufficient, the United States must rely on ships to import oil—vital and strategic material.

We cannot allow the carriage of this energy source to fall completely into foreign hands. We cannot allow our Merchant Marine—our Nation's fourth arm of defense—to deteriorate to such a point that in time of crisis it will be unable to meet our needs. The world is constantly changing. Our enemies of yesterday are our friends of today. And our friends may tomorrow's enemies. We must maintain ourselves. We cannot place our fate in the hands of nations who may not desire to or be able to help us in time of trouble.

This legislation must be acted upon favorably. Americans need the jobs and the United States needs the guarantee of security.

By Mr. RANDOLPH (for himself, Mr. BAYH, and Mr. COOPER):

S. 3405. A bill to amend title 23 of the United States Code to establish a national scenic and recreational highway program. Referred to the Committee on Public Works.

NATIONAL SCENIC AND RECREATIONAL HIGHWAY PROGRAM

Mr. RANDOLPH. Mr. President, on behalf of myself, the junior Senator from Indiana (Mr. BAYH), and the senior Senator from Kentucky (Mr. COOPER), I introduce for appropriate reference a bill to amend title 23 of the United States Code to establish a national scenic and recreational highway program.

The purpose of this bill is to meet a long-recognized need for additional means of access to places of scenic, recreational, historical, archeological, and scientific interest. It is based on the acknowledged premise that significant esthetic, educational, and recreational values can be gained from viewing varied vistas of natural grandeur and beauty, utilizing outdoor, open-space recreational areas, and visiting the numerous scattered sites significant in our cultural heritage.

Nearly 8 years ago the development of a national system of scenic roads and parkways was advocated by President Kennedy's Recreation Advisory Council. In June 1966, the President's Council on Recreation and Natural Beauty—successor to the Advisory Council—issued a comprehensive report recommending adoption of a minimum \$4 billion, 10-year program for the development of scenic roads and parkways. It should be noted that the report was founded on data submitted by each State and by affected Federal agencies proposing specific projects which were then carefully evaluated and ranked according to potential use, construction costs, and proximity to population centers.

Mr. President, the number and quality of scenic and recreational roads available to the motoring public is deficient. The quantity of open-space and recreational

areas, especially that which is readily accessible to many urban dwellers, has been decreasing at the same time more and more families have the time and financial resources necessary to enjoy them. Owners of private automotive vehicles are seeking highways upon which they can drive for pleasure at a more leisurely pace and can benefit from adjoining recreational and other leisure-time facilities.

My bill would attempt to remedy this apparent lack by a new, twofold program; assistance would be provided to both the States and Federal departments and agencies having jurisdiction over public lands of the United States for the development of scenic and recreational highways throughout the Nation. For each of the fiscal years ending June 30, 1974 and 1975, there would be authorized \$150 million to be allocated to the States and \$50 million to be allocated to Federal departments and agencies for the location, construction, or reconstruction of such highways. Although funding at inception would be only at half the level proposed by the President's Council, I believe the smaller scale would be preferable until the program is fully underway. In later years, increased amounts can be appropriated as demonstrated by future needs and experience.

Scenic and recreational highways built or improved on public lands of the United States, of course, would be financed entirely by the Federal Government, but those within State or local jurisdiction would be entitled to 80-percent Federal share of their total cost. Appropriations for the latter would be apportioned among the States according to a formula combining the elements now employed for Federal-aid highway, secondary, and urban-extension funds. Under this pattern all States would receive amounts proportionate to such factors as total area, population distribution, and highway mileage.

To be eligible for Federal aid under this program, States would comply with criteria to be established by the Secretary of Transportation. Scenic and recreational highways would have to be connected with other Federal-aid highways, marked with uniform identifying signs, and limit outdoor advertising signs, displays and devices in accord with the provisions of the Highway Beautification Act of 1965. Priority would be given to the location of such highways near or easily accessible to larger population centers, and no fees could be charged for the use of any facility constructed with the aid of Federal funds.

The Secretary would be authorized to consult with the heads of Federal departments and agencies having jurisdiction over public lands of the United States and to make agreements for the construction or reconstruction of scenic and recreational roads on such lands. As far as possible the same criteria developed for highways constructed or reconstructed by States under this program would also be made applicable to those established and paid for entirely by Federal funds on public lands of the United States.

In addition to the normal costs in-

involved in planning, designing, engineering, constructing and reconstructing scenic and recreational highways, the bill would permit funds appropriated under both phases of the program to be used for such ancillary purposes as acquiring scenic easements, purchasing historical, archeological or scientific sites of interest, providing roadside rest and recreational areas or other facilities deemed appropriate by the Secretary.

Mr. President, as we approach the 200th birthday of this Nation, I think of this program as one which would provide worthwhile and lasting benefits for the people as a whole. This is contemplated by such a bill. It would be very fitting if by the time the national celebration is held in 1976 substantial sections of the new scenic and recreational highway program could be completed in many of our 50 States.

I ask unanimous consent that the full text of the bill be printed at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3405

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 1 of title 23 of the United States Code is amended by inserting at the end thereof a new section as follows:

"§ 145. National Scenic and Recreational Highway Program.

"(a) (1) The Congress finds—

"(A) that there are significant esthetic and recreational values to be derived from making places of scenic and natural beauty and historical, or scientific interest accessible to the public;

"(B) that there is a deficiency in the number and quality of scenic roads, parkways and highways available to the motoring public;

"(C) that with increased population, greater leisure time and higher percentage of privately owned automotive vehicles, more families than ever are seeking suitable areas in which to drive for pleasure and recreation;

"(D) that the growth of cities and large metropolitan centers has decreased the quantity of open-space and recreational areas available to the general public, especially urban dwellers; and

"(E) that substantial economic, social, cultural, educational and psychological benefits could be gained from a nationwide system of attractive roadways making possible widespread enjoyment of natural and recreational resources.

"(2) It is therefore the purpose of this section to provide assistance to the States and to other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to develop highways throughout the Nation to satisfy such needs.

"(b) As soon as possible after the date of enactment of this section the Secretary shall establish criteria for the location and construction or reconstruction of highways by the States in order to carry out the purpose of this section. Such criteria shall include requirements that—

"(1) priority be given in the location of such highways near or easily accessible to the larger population centers of the State;

"(2) such highways be connected with other Federal-aid highways and preferably with the Interstate System;

"(3) such highways be marked with uniform identifying signs;

"(4) effective control, as defined in section 181 (c) of this title, of signs, dis-

plays, and devices will be provided along such highways;

"(5) the provisions of section 129 (a) of this title shall not apply to any bridge or tunnel on any such highway and no fees shall be charged for the use of any facility constructed with assistance under this section.

"(c) For the purpose of this section the term 'construction' includes the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas, and other appropriate facilities determined by the Secretary for the purpose of this section.

"(d) Highways constructed or reconstructed pursuant to this section (except subsection (g)) shall be part of the Federal-aid primary system except with respect to such provisions of this title as the Secretary determines are not consistent with this section.

"(e) Funds appropriated for each fiscal year pursuant to subsection (h) (1) shall be apportioned among the several States for payments to carry out the purpose of this section in the ratio which the total apportionments to each State pursuant to section 104(b) (1), (2), and (3) for such year bears to the total such apportionments to all States for such year.

"(f) The Federal share of the cost of any project for any construction or reconstruction pursuant to the preceding subsections of this section shall be 80 per centum of such cost.

"(g) The Secretary is authorized to consult with the heads of other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to enter into appropriate arrangements for necessary construction or reconstruction of highways on such lands to carry out the purpose of this section. To the extent applicable criteria applicable to highways constructed or reconstructed by the States pursuant to this section shall be applicable to highways constructed or reconstructed pursuant to this subsection. Funds appropriated pursuant to subsection (h) (2) shall be used to pay the entire cost of construction or reconstruction pursuant to this subsection.

"(h) There is authorized to be appropriated out of the Highway Trust Fund (1) not to exceed \$150,000,000 for each of the fiscal years ending June 30, 1974, and June 30, 1975, for allocations to the States pursuant to this section, and (2) not to exceed \$50,000,000 for each of the fiscal years ending June 30, 1974, and 1975, to carry out the provisions of subsection (g)."

SEC. 2. The table of contents of chapter 1 of title 23 of the United States Code is amended by inserting at the end thereof the following:

"145. National Scenic and Recreational Highway Program."

Mr. COOPER. Mr. President, I am pleased to have the opportunity to join the distinguished chairman of the Committee on Public Works, Senator RANDOLPH, in introducing a bill to establish a national scenic and recreational highway program.

As Senator RANDOLPH has indicated, interest in a national program is not new. There already exist several thousand miles of scenic and recreational roads—National and State parkways which allow no commercial traffic, segments of the interstate and other Federal-aid highways, national forest and park roads, and designated boulevards in some cities. The responsibility for planning and building scenic roads is scattered—

carried out by numerous local, State and Federal agencies, with little reference to each other or to any coherent plan to insure desirable use of limited resources.

This bill provides the opportunity to examine the concept of scenic and recreational roads, to determine the desirable characteristics of a national system, and establish the degree of Federal support and guidance necessary to achieve the desired end.

I have been interested in Federal programs to beautify our highways for many years. In 1967 I introduced the scenic development and road beautification bill to encourage States to enhance the scenic value of selected roads within their borders. I have reviewed, with interest, Gov. Maurice Thatcher's ideas for a national, connected system of parkways. I have been concerned about the slow pace at which parkway development takes place, including lack of progress on the proposed Allegheny Parkway in Kentucky, Virginia, and West Virginia.

I hope that hearings on this bill will provide information useful in defining a national system, such as the type of traffic it is to carry—for example, the extent to which commercial vehicles will be allowed—the design and location characteristics best suited to its purpose; its extent and total cost; and which existing roads it should include.

To many travelers the destination has customarily been more important than the trip. I believe that we, as a nation, now recognize the opportunities we miss by concentrating only on the ultimate goal and that we are beginning to enjoy the journey as well as its end—which is, after all, in an old tradition. I think that a carefully conceived, well-executed national program for scenic and recreational roads could add the dimension of quality to highway travel in America.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 3406. A bill to declare certain Federal lands held in trust for the Confederated Tribes of the Goshute Indian Reservation. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of myself and my distinguished colleague from Nevada (Mr. CANNON), I introduce for appropriate reference a bill to declare certain Federal lands held in trust for the Confederated Tribes of the Goshute Indian Reservation located on the boundary line between the States of Nevada and Utah.

The lands in question, adjacent to the present reservation, are in one of the most isolated areas in the United States. The Indians of the Goshute Reservation live in a desolate portion of the great American desert where living is difficult and where the sole means of livelihood is through a marginal stockraising economy. The nearly 2,000 acres of land proposed to be added to the reservation are identical to those now within the reservation boundaries but will permit the tribe to enlarge the present livestock operations and contribute to the welfare of its members.

Mr. President, I ask unanimous consent that a copy of resolution No. 72-G-4

adopted by the governing body of the Confederated Tribes of the Goshute Reservation on December 9, 1971, be printed in the RECORD as a part of my statement.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION OF THE GOVERNING BODY OF THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION

Whereas, by tribal resolution No. 71-G-4 dated July 9, 1970, the governing body of the Confederated Tribes of the Goshute Reservation requested the Superintendent, Nevada Indian Agency, to withdraw all available Public Domain lands within the corridor between the States of Utah and Nevada for addition to the Goshute Indian Reservation, and

Whereas, the tribal resolution No. 71-G-4 dated July 9, 1970 failed to include a certain parcel of Public Domain land described as the SE¼SW¼ Sec. 34, T. 9 S., R. 19 W., Salt Lake Meridian.

Now therefore be it resolved that since that certain parcel of Public Domain land described as SE¼SW¼ Sec. 34, T. 9 S., R. 19 W., Salt Lake Meridian, was not included in tribal resolution No. 71-G-4 dated July 9, 1970, we wish to include that certain herein described vacant Public Domain land in our application for withdrawal, and we do hereby rescind resolution No. 71-G-4 dated July 9, 1970.

Be it further resolved that we request the herein described vacant Public Domain lands adjacent to the Reservation be withdrawn and added to the Goshute Reservation to be held in trust by the United States of America for the Confederated Tribes of the Goshute Reservation.

Be it further resolved that the Nevada Congressional delegation is requested to introduce appropriate legislation that will convey this land to the Goshute Tribe.

Be it further resolved that the Tribal Secretary is authorized to send copies of this resolution to the Superintendent, Nevada Agency; Intertribal Council of Nevada; the Commissioner of Indian Affairs, and the Secretary of the Interior.

By Mr. WILLIAMS (for himself, Mr. RANDOLPH, and Mr. PELL):

S. 3407. A bill to amend the Education of the Handicapped Act to provide for improved opportunities for handicapped persons, and for other purposes. Referred to the Committee on Labor and Public Welfare.

SUPPLEMENTARY EDUCATION SERVICES FOR THE HANDICAPPED ACT OF 1972

Mr. WILLIAMS. Mr. President, I am today on behalf of myself, Mr. RANDOLPH, and Mr. PELL, introducing a bill to amend the Education of the Handicapped Act—a bill to be known as the Supplementary Education Services for the Handicapped Act of 1972. This bill will authorize the Commissioner of Education to acquire and distribute television products and theater productions, telecommunication aids for the deaf, and sensory and communication devices for the handicapped. And, it will create and support more inclusive opportunities for the handicapped in continuing adult and higher education.

The ideas in this bill were prompted by a visit I made to the National Advisory Committee for the Education of the Deaf several weeks ago to make the first interview ever conducted via teletype, and to celebrate the installation of a teletype at the Mount Carmel Guild in New Jersey. The demonstration of the

teletype reinforced my interest in problems of communication for those with disabilities. It brought home to me again the inequalities in our Nation for those who have disabilities that they must cope with every day. And it made me ask a very fundamental question. With all of our advances in technology and additions to knowledge in the last few years, why has that knowledge not been put to use to devise methods to enable disabled persons to function more freely?

I believe too many of us take for granted what modern technology has provided at minimal cost—the telephone, newspapers, films, television, street signs, warning signals. We fail to realize that these benefits are too often unavailable to the handicapped. And therefore we fail to invest much thought, planning, and foresight into creating mechanisms which would enable the handicapped to take advantage of similar communication aids, and to enable them to move more freely and independently in our society.

A few weeks ago, I asked the Congress and the Nation to commit themselves to the goal of full integration of handicapped persons into working, living, and social patterns of this society. If we are to reach our goal, then we must plan now to include them, and enable them to make this integration with ease, and with as little expense as possible. But to do this, we must revise our ways of thinking about persons with disabilities.

I recently had the opportunity to read an address by Dr. James Gallagher, the first Commissioner of the Bureau of Education for the Handicapped and presently director of the Frank Porter Graham Child Development Center at the University of North Carolina. In his address, Dr. Gallagher defined the handicapped as individuals who have problems in processing information around them and responding to this information. In viewing the handicapped in this way, he suggested we might identify the handicapped according to four types of problems they face. There are those who have problems in the reception of information—individuals with hearing and visual handicaps; those who have problems linking new information to old information—individuals who are mentally retarded, or with learning disabilities; those who have difficulties with communication skills—individuals with cleft palates, with cerebral palsy or with motor difficulties; and those who have difficulties with executive control—individuals who have motivational control problems, difficulties with attention control or who are emotionally disturbed.

As simple and easily understood as this categorization is, its ramifications are profound. First, it suggests that if we are going to deal with the problems of the handicapped adequately, not only must we take steps to eliminate causes, but we must find ways to ameliorate the conditions each individual finds himself in. Second, we must plan and provide a continuum of services that will bring each individual with handicaps as close as possible to normal functioning in daily situations. Third, and most important, we must realize that in a rapidly changing society where all individuals

are taxed to keep up with rapid change, individuals who have difficulties processing and responding to even the simplest information are at a decided disadvantage.

If we are to find ways to fully integrate these individuals, we must also find ways to help them compensate for their disabilities and to allow them to compete on an equal basis as possible. That is why I believe that the amendments I am introducing today are so important. We must begin as soon as possible to make their effects felt.

The first section of this bill authorizes the Commissioner to acquire and distribute telecommunications aids to the deaf. These aids would also be distributed to public and private nonprofit schools, agencies, and organizations which serve the deaf, and to police, fire, and other emergency service public agencies. These communication devices are to be made available for the purpose of providing public services to the deaf in times of emergency, to increase educational, cultural, and recreational opportunities for the deaf, and to increase normal communication opportunities between the deaf and hearing persons.

At the present time, there is a teletype system for the deaf in operation—a network of approximately 1,000 teletypewriters. These machines are largely refurbished and obsolete business machines which have been donated or purchased at a cost of approximately \$250. This equipment, because it is old, does not have the capabilities of newer machines and therefore cannot communicate with other teletype networks used by motels, airlines, police, and other metropolitan agencies.

Under this section, an electronic keyboard could be provided that can be acoustically coupled with any telephone and will allow for two-way communication with any other phone with a similar system. For emergency services, these devices could communicate with other teletype systems or with central operators that could call emergency aid for the deaf. These systems can be purchased at \$200 to \$300 per system, and are compatible with existing devices such as the teletype. They are lighter, more portable, and cost about one-fifth what the teletypewriter costs. These devices would have the added capability of being able to connect with any similar computerized system in an educational institution, and therefore could be utilized for important educational services for deaf persons. There are many other telecommunications devices which have been developed that could be used or could be adapted for use by the deaf. This section gives the Commissioner authority to look into such aids and to provide them to the deaf, and to other agencies to improve deaf person's ability to communicate.

The second section of the bill authorizes the Commissioner to provide sensory and communications devices to local and State educational agencies, and other appropriate public or private nonprofit agencies that provide education for handicapped persons other than the

deaf. Such devices are to be provided in order to allow handicapped children and adults to participate more fully in elementary, secondary, postsecondary, and continuing education programs.

Under this provision, the Commissioner could provide these aids to enable handicapped persons to more easily receive educational services or allow them to compete more easily with others without handicaps. For example, there are two devices which come to mind that would aid blind individuals in the pursuit of their education. One is a print reader which allows blind individuals to read anything that is printed. The second is a fast playback device like a tape recorder which allows ready access to printed materials, and is more portable and flexible than present talking books for the blind. Let me point out that the authorizations under these two sections represent an important first step toward providing these communication devices at no or low cost to all who need them.

The third provision would authorize grants and contracts for continuing adult and higher education opportunities for the handicapped, and would provide for the development of specifically designed educational programs, supplementary services, and other appropriate services designed to help handicapped persons enjoy equal education opportunities and to compensate for their handicaps. This is a provision that has long been needed. We know that each day more than 1,000 new books are published, more than 75 hours of television programming, and myriad magazines and newspapers are available. We talk often about the "information explosion"—about future shock—and the fact that we are being faced with rapid changes in society and major advances in knowledge and information. Community colleges, "open" universities, and external degree programs have been created offering a wider variety of learning experiences and providing most of us the possibility of continual learning. For one reason or another, the handicapped are often excluded from these experiences.

We know that there are many continuing and adult education programs operating in local communities. Colleges have undertaken to provide special advanced classes for the communities in which they are located. But we have forgotten that the handicapped are often excluded from these programs. If you examine all of these facilities, you will find few, if any, handicapped individuals enrolled. The reasons are obvious, even if the results are unintended. Theoretically, the handicapped should be involved in all of these classes, but there are physical obstacles to their enrollment: lack of transportation, inability to get into the building, inability to hear or see when they get there. For the more severely handicapped, there are other problems: the inability to keep up with the normal progress of a class or lack of familiarity even with basic processes of examination, because they have been denied education for too long. Most program coordinators have not considered these problems. Or, when they have, they have not had funds available to provide

special facilities or special compensatory features which would allow the handicapped to participate more readily.

This provision will provide those additional funds. It will enable our communities to plan continuing educational services for the handicapped, and will provide for the creation of special classes and services to begin the compensatory education and training that many of the handicapped need.

Finally, the bill will expand the existing instructional media for the handicapped program to include television products, theater productions, and other media. This provision will allow the Commissioner of Education to provide outstanding theater, television, and other cultural productions to handicapped persons.

Mr. President, I believe that this bill provides important supplementary services for the handicapped. It fills in certain gaps in existing authority for programming for the handicapped, and will enable the Commissioner of Education to put to use developments in the area of technology and information processing which have been produced under research and development authority. And I expect under the broad research authority in title VI, ESEA, it will stimulate further research on applications of existing advances in communication and sensory technology to the real problems of information processing that face handicapped persons.

It is difficult for me to imagine that a Nation which developed the intricate communications technology involved in going to the moon, and supporting information satellites cannot find the expertise, and the money to allow persons with similar information problems to communicate more freely. I refuse to accept the argument that these are not similar problems. The answer has to lie in our willingness to make a commitment to people. And I, for one, will not accept our lack of commitment any longer.

Mr. President, I think it is particularly appropriate that we introduce this legislation today for today the Council for Exceptional Children opens the general sessions of its convention here in Washington at the Shoreham Hotel. CEC is celebrating its 50th anniversary of service and advocacy for exceptional children. This organization is well known throughout the Nation for its fine work and commitment on behalf of exceptional children, and I believe it is a fitting tribute that we join them in celebrating their 50th anniversary with the introduction of this bill.

Mr. President, I ask unanimous consent that the text of this bill be printed immediately following my remarks; and Mr. President, I ask unanimous consent that letters and excerpts from letters I have received on the Subcommittee on the Handicapped, S. 3158, the Office of the Handicapped, and Senate Joint Resolution 202, the White House Conference on the Handicapped be printed immediately following my remarks.

There being no objection, the bill and letters were ordered to be printed in the RECORD, as follows:

S. 3407

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Supplementary Education Services for the Handicapped Act of 1972".

SEC. 2. (a) Section 651 of the Education of the Handicapped Act (84 Stat. 178) is amended by striking out "(a)".

(b) Section 651 of such Act as amended by this Act is further amended by inserting immediately after "films" the following: ", television products, theatre productions, and other media".

SEC. 3. (a) Section 652(b) (1) of such Act is amended by inserting after "films" the following: "and television products".

(b) Section 652(b) (3) of such Act is amended by inserting immediately before the semi-colon "and television products".

(c) Section 652(b) (4) of such Act is amended by inserting immediately after "films" the following: ", television products".

SEC. 4. Section 654 of the Education of the Handicapped Act is amended to read as follows:

"TELECOMMUNICATION AIDS FOR THE DEAF

"Sec. 654. (a) The Commissioner is authorized to acquire by purchase, lease, or gift, Teletype, telecommunication and similar communication systems.

(b) The Commissioner is authorized to distribute by loan or direct grant such communication systems acquired under subsection (a) to public and private non-profit schools, agencies, and organizations which serve the deaf, and to police, fire and other emergency service public agencies and to deaf persons, for the purposes of providing equal opportunity for deaf persons to receive the protection of public agencies in emergencies.

(c) In distributing communication devices under this section, the Commissioner shall consider the provision of—

"(1) public services to deaf persons in emergencies;

"(2) increased educational opportunity for deaf persons;

"(3) increased cultural and recreational opportunities for deaf persons; and

"(4) increased normal communication opportunity between deaf and non-deaf persons."

SEC. 5. The Education of the Handicapped Act is further amended by adding at the end thereof the following new sections:

"SENSORY AND COMMUNICATION DEVICES FOR THE EDUCATION OF HANDICAPPED PERSONS

"Sec. 655. The Commissioner is authorized to—

"(1) provide by contract, lease, or grant for the development or acquisition of, sensory and communication devices designed to allow handicapped children and adults to participate more fully in elementary, secondary, post secondary or continuing education programs and in increased cultural, recreational, and communication opportunities between handicapped and non-handicapped persons; and

"(2) to distribute such sensory and communication devices to local and State educational agencies, institutions of higher education, and other appropriate public or private non-profit agencies providing education for handicapped persons.

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 656. For the purpose of carrying out this part, there are authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1973; \$30,000,000 for the fiscal year ending June 30, 1974, and \$35,000,000 for the fiscal year ending June 30, 1975."

SEC. 6. The Education of the Handicapped Act is further amended by adding at the end thereof the following new part:

"PART H—CONTINUING AND HIGHER EDUCATION FOR THE HANDICAPPED

"STATEMENT OF PURPOSE

"Sec. 671. The purpose of this part is to develop, support, and improve opportunities for handicapped persons to participate in continuing education programs throughout their lifetime and for all handicapped persons to participate as fully as possible in the education programs of technical and vocational institutions and institutions of higher education which participate in educational programs with non-handicapped persons, thereby providing maximum opportunity for positive social, cultural and educational interaction between handicapped and non-handicapped persons.

"GRANTS AND CONTRACTS FOR CONTINUING AND HIGHER EDUCATION FOR HANDICAPPED PERSONS

"Sec. 672. The Commissioner is authorized to make grants and contracts to institutions of higher education, public or private, non-profit technical and vocational schools, State and local educational agencies, radio and television stations and other appropriate agencies for—

"(1) the development and conduct of specifically designed educational programs to meet the learning needs of handicapped persons;

"(2) providing supplementary services such as tutoring, interpreting services for deaf persons, note taking services for deaf or blind or physically handicapped persons; and

"(3) other appropriate services which are designed to help handicapped persons enjoy equal education opportunities and to compensate for their physical, sensory, mental or emotional handicaps.

"DEFINITION

"Sec. 673. For the purpose of this part, the term "continuing education" refers to educational offering designed to provide handicapped persons with (1) fundamental elementary and secondary educational programs designed to remedy deficiencies in the basic education of handicapped persons; (2) academic and technical materials at the high school and post-secondary level designed to help the handicapped person function more productively.

"AUTHORIZATION OF APPROPRIATIONS

SEC. 674. For the purpose of carrying out this part, there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1973, \$7,500,000 for the fiscal year ending June 30, 1974, and \$10,000,000 for the fiscal year ending June 30, 1975."

EDUCATION COMMISSION OF THE STATES,

Denver, Colo., March 17, 1972.

HON. HARRISON A. WILLIAMS, JR.,
U.S. Senator, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR WILLIAMS: On behalf of the Task Force and staff of the Handicapped Children's Education Program, I would like to take this opportunity to commend you sincerely for your recent successful efforts on behalf of the handicapped.

The establishment of a Subcommittee on the Handicapped as part of the Labor and Public Welfare Committee comes at a time when alternate strategies must be found to deliver services to the vast number of handicapped persons who need but do not now receive them. Your dedicated interest in the development of national policies and programs in this area clearly indicates your total commitment of serving this group.

It is our sincere hope that you will look to the Handicapped Children's Education Program for assistance in carrying out this new work. Your fellow Task Force members and the HACHE staff will be delighted to support

you in any way that you feel may be helpful in achieving your goals.

Sincerely,

GENE HENSLEY,
Director, Handicapped Children's Education Program.

STATE OF NEW JERSEY, DEPARTMENT
OF INSTITUTIONS AND AGENCIES,
Newark, N.J., March 17, 1972.

HON. HARRISON A. WILLIAMS, JR.,
U.S. Senator, Committee on Labor and Public
Welfare, Washington, D.C.

DEAR SENATOR WILLIAMS: I read with a great deal of pleasure your commitment to improve the lot of handicapped individuals in our society. It seems to me that the steps you are planning to create a new subcommittee on the handicapped; to support the calling of a White House Conference on the handicapped and to establish an office on the handicapped in the Department of HEW are all excellent steps that should lead to effective instruments for assuring equal opportunities for the blind and other handicapped individuals. * * *

With warmest personal good wishes.

Very truly yours,

JOSEPH KOHN,
Executive Director.

STATE OF RHODE ISLAND PROVI-
DENCE PLANTATIONS, DEPART-
MENT OF EDUCATION,
Providence, R.I. March 16, 1972.

Senator HARRISON A. WILLIAMS, JR.,
Chairman, U.S. Senate, Committee on Labor
and Public Welfare, Washington, D.C.

DEAR SENATOR WILLIAMS: I reviewed your proposed bill, S 3158, and accompanying joint resolution with great interest. When one considers the large number of activities and programs for the handicapped scattered among the various agencies of Health, Education, and Welfare, the need for coordination becomes obvious. Please let me know of any way that I can support your proposal.

Sincerely yours,

FRANCIS B. CONLEY,
Coordinator, Special Education.

THE COUNCIL FOR
EXCEPTIONAL CHILDREN,
March 13, 1972.

HON. HARRISON A. WILLIAMS, JR.,
Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I was very pleased to receive your speech delivered February 9, 1972 as printed in the Congressional Record. I am sure that you know we appreciate your continued interest in the education of handicapped children and all of the important things you are helping to make possible for them.

Please be assured of our continued interest and cooperation in any way possible.

With kindest regards and best wishes.

Sincerely yours,

WILLIAM C. GEER,
Executive Secretary.

AMERICAN PSYCHIATRIC ASSOCIATION,
Washington, D.C., March 15, 1972.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public
Welfare, U.S. Senate, New Senate Of-
fice Building, Washington, D.C.

DEAR SENATOR WILLIAMS: The American Psychiatric Association, which represents 19,000 of the 25,000 practicing psychiatrists in the United States, wishes to commend you on the initiative you have taken in behalf of the handicapped people of this country.

We are aware that you have included the mentally retarded as recipients of your worthy efforts, and we wholly support your concerns since our members have been actively engaged in this area for many years.

The profession of psychiatry is interested in the mental health of all people, including the handicapped. If we, as a society, continue to impose additional hardships on this special group of people instead of finding ways and means to promote their personal welfare through rehabilitation, vocational training, and other aids, there is no question that, as a consequence, their mental health will suffer.

If you should require any assistance from our Association in your endeavors for the handicapped, be assured that we will hasten to be of service.

With very best personal regards, I am
Sincerely,
EWALD W. BUSSE, M.D.,
President.

COMMONWEALTH OF VIRGINIA,
STATE DEPARTMENT OF EDUCATION,
Richmond, Va., March 13, 1972.

HON. HARRISON A. WILLIAMS, JR.,
U.S. Senate,
Washington, D.C.

DEAR MR. WILLIAMS: Thank you for the remarks made recently by you on the Senate floor asking for a major Congressional and National commitment to the handicapped. You have made a strong and I trust useful statement which should move this Nation closer to a fulfillment of its obligation to the handicapped. This I view as morally necessary and economically feasible. Should you be successful in establishing an Office of the Handicapped, I hope that one of its primary efforts will be toward bringing cohesiveness to the multitude of now existing programs.

Sincerely,
S. P. JOHNSON, Jr., Director,
Elementary and Special Education.

SPECIAL EDUCATIONAL PROGRAMS,
Washington, D.C., March 13, 1972.

HON. HARRISON A. WILLIAMS, JR.,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: I have read and studied your recent remarks calling for a national commitment to the handicapped (Congressional Record, Volume 118, No. 17, Wednesday, February 9, 1972). There has been too little attention to the condition of the handicapped in the United States. A condition which in some parts of the country has reached crisis proportions. Too many exceptional children are deprived of educational justice and as you stated, the realization of their personal and economic potential.

Discrimination against the handicapped is as invidious as any we know, and to paraphrase a popular notion that they are often last thought of and first cut off when budgetary allotments are made. Your remarks on the Senate Floor and the statistical data contained therein are all too accurate and once again point out the tragedy which is in the making in this country. I am enclosing copies of our own analysis of this problem right here in the shadow of the Capitol.

As a professional deeply involved in special education, I want to record my support for each of your proposals and to particularly identify myself with your call for a White House Conference on The Handicapped and provision in resolution 202 providing for "educational, health and diagnostic services for all children early in life so that handicapped conditions may be discovered and treated early."

I am willing to assist in this national endeavor you propose, and I enlist your assistance in alleviating the current tragic situation which exists right here in Washington, D.C.

Sincerely yours,
JOHN L. JOHNSON,
Associate Superintendent.

STATE OF WISCONSIN,
DEPARTMENT OF PUBLIC INSTRUCTION,
Madison, Wis., March 15, 1972.

Senator HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public
Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I sincerely appreciate receiving your letter concerning new congressional and national commitment to handicapped persons. I strongly support the ideas expressed in your remarks in the Congressional Record of Wednesday, February 9, 1972.

While there have been a number of successful programs, established by the federal government for handicapped children and adults, I feel that your call for a national commitment is most necessary and timely. I have served on a number of national groups, including the National Advisory Committee on Education of the Deaf, and currently the committee that you also serve on, the Task Force of the Handicapped Children's Education Program for the Education Commission of the States.

I think your ideas expressed in S. 3158 as they relate to coordinating programs is most feasible. I also strongly endorse the concept of a White House conference to focus the attention of the nation, at least for a brief time, on the achievements and needs of handicapped people.

Cordially yours,
JOHN W. MELCHER,
Assistant State Superintendent.

VIRGINIA COMMISSION FOR
THE VISUALLY HANDICAPPED,
Richmond, Va., March 15, 1972.

The Honorable HARRISON WILLIAMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: May I first congratulate you on your presentation in the Wednesday, February 9, 1972, edition of *The Congressional Record* concerning your subcommittee on the handicapped, the proposed creation of an Office of the Handicapped in the Department of Health, Education, and Welfare, and the proposed White House Conference on the Handicapped. I found the data you presented to be both thought provoking and challenging.

Sincerely,
FRANK S. PENLAND,
Director, Education Service Department.

KANSAS STATE DEPARTMENT OF
EDUCATION,
Topeka, Kans., February 22, 1972.

HON. HARRISON WILLIAMS, JR.,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR WILLIAMS: The three major initiatives which you have spearheaded should show a significant impact toward alleviating the problems and neglect of the handicapped. It would appear that such a move would give additional visibility to aid in the implementation of the various programming that is needed. * * *

Yours sincerely,
JAMES E. MARSHALL,
Director of Special Education.

INTERAGENCY COUNCIL FOR THE
HANDICAPPED OF BERGEN COUNTY,
Bergenfield, N.J., February 21, 1972.

Senator HARRISON A. WILLIAMS, JR.,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR WILLIAMS: Thank you for your reply dated February 16th and a copy of the Congressional Record dated February 9th. Your comment appear to be "taken from the lips" of parents and professionals who for years have been accepting this piecemeal offering. Even those of us in Bergen County New Jersey who have accomplished far more

than other parts of the nation still have many untold tasks to bring the handicapped up to the second class citizen. Your three proposals will take a giant step forward. If I may contribute two areas which at first reading of the Congressional Record, do not appear covered. First a need to educate that public who are not handicapped or who do not have any handicapped loved ones, that the handicapped do not have a contagious disease and that children without handicaps can play with handicapped children. This applies to all ages including the adult working world where the handicapped are denied social associations which they desperately need to feel success.

In addition there is a need for living facilities for the handicapped young adult who must and desires to learn to live independently of his family. This may require some social services as the young adult learns. Some call these half way houses while others call them living centers. With these facilities must be vocational training or retraining facilities.

Please feel free to call upon our Council for support or reference or in anyway we can assist you in this most important work. We shall be ever grateful for this work you have undertaken.

NORMAN A. BLESHEMAN.

UNITED CEREBRAL PALSY
ASSOCIATIONS, INC.,
New York, N.Y., February 22, 1972.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public
Welfare, U.S. Senate, New Senate Office
Building, Washington, D.C.

DEAR SENATOR WILLIAMS: We of United Cerebral Palsy Associations, Inc., are delighted to learn of your three initiatives on behalf of the handicapped, namely: the creation of a new Subcommittee on the Handicapped; the introduction of a resolution calling for a White House Conference on the Handicapped; and the introduction of legislation to establish an Office of the Handicapped in the Department of Health, Education, and Welfare. * * *

Sincerely,
ELSIE D. HELSEL, Ph. D.,
Washington Representative.

STATE OF DELAWARE,
DEPARTMENT OF LABOR,
Wilmington, Del., March 14, 1972.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Labor and Public
Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: Thank you for providing us with a copy of the Congressional Record containing your comments on the needs of our handicapped citizens and the legislation which you introduced. We strongly endorse the action you have taken and welcome your aggressive leadership and commitment to the handicapped.

The most attractive aspect of your comments as viewed by us is your awareness that a significant part of the answer to our problems lies with the lack of coordination between programs already established. In our experience, even more than coordination is needed. We are increasingly talking about the need for "integration" of services across agency and program lines in such a way that there is a singular point of contact between the handicapped person and the total range of services that are needed to develop optimal potential. Encouraged by initial progress toward the integration of social, employment, and rehabilitation services toward the goal of vocational restoration or self-support, we are now attempting to devise plans for developing an integrated service delivery system which would add education to our program in Delaware. Our idea is to cut across "sole state agency" lines through the means of

contracts between agencies in such a way that a prime agency is provided the responsibility for developing a singular comprehensive plan for each handicapped or disadvantaged individual, calling upon the resources of all participating agencies as necessary. Although this offers many benefits and problems, the "client" is relieved of the necessity to work simultaneously with a host of agencies and programs.

Partly due to the categorical nature of public programs and reinforced by the self interests of professional groups and agencies, we frequently duplicate our efforts and utilize our extremely limited resources poorly. Bold and imaginative leadership and new approaches will, we believe, be required to realize the commitments of which you speak.

We wish you every success with your activities and pledge our efforts and resources to the same commitments.

Sincerely yours,

F. ARTHUR BRILL, Director.

Bronx, N.Y.

March 17, 1972.

DEAR SENATOR WILLIAMS: As the legislative director of the Co-op City Handicapped Adult Association, I would like to thank you for the clear and honest statements you made concerning the handicapped. We read your statements in the CONGRESSIONAL RECORD of February 9, and we saw it as a Magna Carta type announcement. The handicapped wish to be fully integrated into their communities; not treated as outcasts. We live in an exciting society and the handicapped can make a positive contribution. We think passage of S. 3158 and S.J. 202 will be a giant step towards social equality for the handicapped.

Anything we can do, please let me know.

Respectfully yours,

LAWRENCE DALEY,
Legislative Director.

STATE OF DELAWARE,

DEPARTMENT OF PUBLIC INSTRUCTION,
Dover, Del., March 16, 1972.

Hon. HARRISON A. WILLIAMS, JR.,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR WILLIAMS: The presentation which you recently made in the Senate asking for a major congressional and national commitment to the handicapped has been discussed with the members of our staff who are especially concerned with handicapped children. We commend you for your comments and for your interest in handicapped individuals.

We are highly supportive of the three major initiatives taken; we are particularly enthused about the legislation which you have introduced which would establish an Office of the Handicapped in the Department of Health, Education, and Welfare. With over one hundred different federally-funded programs for the handicapped, a coordinating office would indeed be desirable.

Best wishes in this endeavor.

Respectfully,

KENNETH C. MADDEN,
State Superintendent.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1819

At the request of Mr. BROCK, the Senator from New York (Mr. BUCKLEY) was added as a cosponsor of S. 1819, a bill to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

S. 1883

At the request of Mr. MAGNUSON, the Senator from Wyoming (Mr. HANSEN)

was added as a cosponsor of S. 1883, the Interstate Taxation Act.

S. 2161

At the request of Mr. HARTKE, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2161 a bill to amend chapters 31, 34, and 35 of title 38, United States Code, to increase the vocational rehabilitation subsistence allowances, the educational assistance allowances, and the special training allowances paid to eligible veterans and persons under such chapters.

S. 2163

At the request of Mr. MATHIAS, the Senator from Delaware (Mr. BOGGS) was added as a cosponsor of S. 2163, the Vietnam Veterans Act of 1971.

S. 2579

At the request of Mr. HARRIS, the Senator from Texas (Mr. BENTSEN) and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S. 2579, the Ocean Mammal Protection Act of 1971.

S. 2956

At the request of Mr. JAVITS, the Senator from Pennsylvania (Mr. SCHWEIKER) and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 2956, the War Powers Act.

S. 3012

At the request of Mr. CURTIS, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 3012, the "Individual Retirement Benefits Act of 1971."

S. 3083

At the request of Mr. HARTKE, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of S. 3083, a bill to amend the Fair Packaging and Labeling Act to provide for a uniform system of quality grades for food products, to provide for a system of labeling of food products to disclose the ingredients thereof, to provide for a system of national standards for nutritional labeling of food products, and to provide for a system of labeling of perishable and semiperishable foods.

S. 3121

At the request of Mr. SCOTT, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 3121, a bill to extend the Civil Rights Commission for 5 years.

S. 3276

At the request of Mr. DOLE, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 3276, a bill to enable wheat producers, processors, and end-product manufacturers of wheat foods to work together to establish, finance, and administer a coordinated program of research, education, and promotion to maintain and expand markets for wheat and wheat products for use as human foods within the United States.

S. 3355

At the request of Mr. DOLE, the Senator from Ohio (Mr. TAFT) was added as a cosponsor of S. 3355, a bill to authorize the payment of a death gratuity to the survivors of certain members of the Armed Forces who have been in a missing-in-action status and subsequently determined to have died during a period

when no Government life insurance program was in effect for active duty personnel.

SENATE JOINT RESOLUTION 156

At the request of Mr. HARTKE, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of Senate Joint Resolution 156, to designate the month of April 1972 as "National Check Your Vehicle Emissions Month."

SENATE JOINT RESOLUTION 217

At the request of Mr. McGEE, the Senator from Rhode Island (Mr. PELL) and the Senator from Maryland (Mr. MATHIAS) were added as cosponsors of Senate Joint Resolution 217, a joint resolution to create an Atlantic Union delegation.

SENATE RESOLUTION 284—SUBMISSION OF A RESOLUTION RELATING TO AGREEMENTS OR TREATIES CONCERNING LANDING RIGHTS OF SUPERSONIC AIRCRAFT

(Referred to the Committee on Foreign Relations.)

SUPERSONIC AIRCRAFT NOISE AND BOOM LIMITATIONS

Mr. CRANSTON. Mr. President, together with Senators MUSKIE and PELL, I submit two resolutions which express the sense of the Senate that any treaty or agreement granting landing rights within the United States to supersonic aircraft, limit both their noise levels and sonic booms. The resolutions provide: First, that noise levels from supersonic aircraft should be required to meet the international standards for new subsonic jet aircraft, and second, that sonic booms should not be allowed over the United States or within 3 miles of the coast. The noise standard included in the resolution is annex 16 of the International Civil Aviation Organization Convention—a treaty approved by the Senate.

Annex 16 establishes noise standards for all current and future generation commercial subsonic aircraft.

Aircraft noise is measured in effective perceived noise decibels. Annex 16 limits noise emissions at the level of 106 EPNdb for new generation aircraft the size of the Concorde. It is unclear exactly what noise levels will be emitted by the Concorde. The British and French Governments claim that the Concorde will emit noise at the level of 114 EPNdb. Critics of the Concorde, including the acoustical director of NOISE—a group of city governments organized to fight aircraft noise—claim that the Concorde will produce 120 EPNdb or more. The Concorde will therefore emit between 8 and 14 plus EPNdb more than annex 16 standards require.

The difference in these numbers does not seem great until you realize that noise is measured on a logarithmic scale. A noise differential of 10 EPNdb was described in the hearings on S. 1566—an aircraft noise retrofit bill—before the Senate Commerce Subcommittee on Aviation by Randall Hurlburt, the acoustical engineer for the City of Inglewood,

which is adjacent to Los Angeles International Airport:

[A reduction of 10 EPND] means that where there are presently 500 aircraft per day flying over a neighborhood, the noise will be approximately equivalent to 50 airplanes per day. Where there are 50 airplanes per day, the change will make the noise environment equivalent to 5 airplanes per day. In spite of what anyone says, this is a dramatic change!

In terms of the total noise environment around an airport, the Concorde will therefore produce between 8 and 14 times more noise than it would if the plane met Annex 16 standard. This would be a dramatic step backward. Our airport environments would become noisier. The goal of reduced aircraft noise pollution embodied in Annex 16 standards would be negated.

Any aircraft flying at speeds faster than sound must produce a sonic boom. There is no question sonic booms cause extensive damage. Sonic booms were inflicted on Oklahoma City during 5-month long tests run by the Air Force. The result was \$218,000 in actual damage payments and court awards for damage to windows, plaster, et cetera. Boeing engineers calculated the boom from a Boeing SST would be twice as intense as the typical Oklahoma City boom. The Department of the Interior estimates that if supersonic transports become fully operational over the United States, damage claims would be \$35 to \$80 million each year. This is the most conservative of estimates ranging up to \$160 million each year.

A sonic boom is not a phenomenon that lasts only a few moments. A sonic boom is continuous during all times an airplane is flying at supersonic speeds. If a plane flew at supersonic speeds from New York to Los Angeles, it would leave in its wake a boom carpet—a corridor of the earth's surface which feels the boom. The boom carpet would be approximately 50 miles wide and 3,000 miles long. Every human, every animal, and every structure unfortunate enough to be in that area would be struck by the sonic boom.

In Senate hearings last year, William Macgruder, head of the SST project with the Department of Transportation, said the administration had taken the position for 5 years that aircraft should not be flown at supersonic speeds over land. To make this position binding on airlines flying supersonic aircraft, the agreement granting landing rights should require that no supersonic flight shall occur over the United States or within 3 miles of its shores.

Annex 16 was adopted internationally to reduce aircraft noise. Progress is now being made toward this goal. Older aircraft such as 707's, 727's, DC-8's, and DC-9's, emit considerably more noise than the Annex 16 standard for new aircraft allows. 747's built 2 years ago did not meet annex 16, nor were 747's covered by annex 16. 747's now being built do meet annex 16 standards although they are not required to meet them. The new DC-10 and L-1011 have noise levels which meet annex 16 requirements. Boeing, Douglas, and Lockheed are all building aircraft that meet annex 16.

We must continue to progress in our fight against aircraft noise. If the Con-

corde is allowed to fly without first meeting annex 16 standards, the progress will be stopped. Aircraft noise will not be reduced, nor will it even remain constant. The Concorde will seriously increase aircraft noise. The Concorde, which will be replacing 747's on international flights, carries less than half the number of passengers at approximately twice the level of noise.

Before the Concorde can land in the United States, either an international agreement or a bilateral agreement must be signed by the United States. The United States should not sign such an agreement unless annex 16 standards for noise are included in such agreement.

Requiring the Concorde to meet annex 16 standards is a difficult decision. It may mean the Concorde will not land in the United States. Supporters of the Concorde believe the U.S. State Department will never allow environmental concern to prevent Concorde flights to the United States. Britain and France have over \$1.3 billion invested. It is a serious matter to say to our allies that the largest market in air traffic will not be open to the Concorde. It is also a serious matter to say the progress making our environment more livable will be reversed. The high level of noise produced was one of the major reasons the American SST was discontinued. Can we apply lesser standards to the European supersonic transport? The aircraft noise problem was realized, yet work continued on the Concorde. Britain and France had no reason to believe our position would be different on the Concorde than it was on the American SST. If the Concorde cannot meet acceptable noise standards, then it must not be allowed to land in the United States.

The Senate must decide this now. Discussions on supersonic aircraft noise are currently taking place at talks sponsored by the International Civil Aviation Organization. If the United States does not take the position annex 16 limits should apply to supersonic aircraft, then by default the opposite will be the U.S. position. Applying annex 16 noise standards to supersonic aircraft is a position consistent with all that has transpired in the field of aircraft noise during the past few years. It is the position of the Airport Operators International Council, a group that represents operators of almost all major airports in the United States. It must be the official position of the United States.

The resolution is as follows:

S. Res. 284

Resolved, That it is the sense of the Senate that any treaty or agreement entered into by the United States, to permit or approve the conditions under which supersonic aircraft may land in the United States, should require at a minimum that the noise levels for such aircraft be no greater than the noise levels allowed for subsonic aircraft under Annex 16 of the Convention on International Civil Aviation.

SENATE RESOLUTION 285—SUBMISSION OF A RESOLUTION RELATING TO MINIMUM NOISE LEVELS FOR AIRCRAFT

AIRCRAFT NOISE REDUCTION

Mr. CRANSTON. Mr. President, for myself, Senator MUSKIE, and Senator

PELL, I submit a resolution which expresses the sense of the Senate that the U.S. position at the ongoing negotiations of the International Civil Aviation Organization—ICAO—shall be that all subsonic aircraft flown in international flights should meet noise levels established in annex 16 of the ICAO Convention. Annex 16 applies only to new generation aircraft first manufactured after 1971—for example, L-1011, DC-10. Older generation aircraft—for example, 707, 727—in most instances will require retrofitting or modification to reduce aircraft engine noise levels down to annex 16 standards.

Modern technology has discovered a method, called retrofitting, that can reduce aircraft engine noise. Retrofitting involves lining the nacelle, or cowl, of a jet engine with soundproofing material, and enlarging the size of the engine's exhaust outlets. The present generation of planes such as the 737, 727, 707, DC-8, and DC-9, and the older 747, which do not meet acceptable noise level standards can be retrofitted. Retrofitting can reduce the aeronautical noise up to 75 percent on some types of aircraft and bring all types within the limits established by annex 16.

The great need for reducing aeronautical noise is immediate. Physical and emotional damage is being inflicted on persons living near airports. Excessive noise can create a situation where sleep is not restful and leisure time is not relaxing. Constant tension is the result. Vascular constriction and a lowered oxygen level to the cerebral tissues are physiological changes noise can cause.

Deafness is perhaps the most common known consequence of prolonged exposure to high levels of noise. Deafness can reduce the income earning capability of individuals and make their lives more difficult. It is not a handicap that we should allow to be inflicted when it is possible to prevent the high levels of noise that now exist around airports.

The effects of increased noise pollution is making areas of our urban environment unlivable. The most visible examples of this are the neighborhoods beneath the landing and takeoff paths at busy metropolitan airports. Land with a rating of NEF-40—noise exposure forecast is not compatible with residential living, according to the Department of Housing and Urban Development.

Major international airports in the United States often have considerable surrounding areas that fall within the NEF-40-plus category. Los Angeles International Airport has 9,000 acres surrounding it which is classified as NEF-40 or above. The city of Los Angeles is currently spending \$300 million to eradicate 1,994 private homes around the airport because of public objection to jet noise. The 400 acres the money will buy accounts for only 5 percent of the NEF-40-plus land around the airport. Courts in California have ordered cities to buy up land with NEF-40 plus around municipal airports.

A study estimates the removal cost for the full project around the Los Angeles Airport alone will be \$1.268 billion. Los Angeles would lose more than \$20 million annually in property taxes. Similar results will occur in other cities. Not only

is the human cost in physiological and psychological damage high in unlivable areas, but the monetary cost to cities is becoming unbearable.

If the noise levels of aircraft utilizing Los Angeles International Airport is lowered by 10 EPNdb, 4,500 of the 9,000 acres in NEF-40-plus acres will no longer have NEF ratings above 40, according to Randall Hurlburt, acoustical expert for the city of Inglewood. Applying this figure to the projected cost for the removal of residences in NEF-40-plus acres around the Los Angeles Airport, savings in removal costs would be around \$600 million. Tightening the aircraft noise standards would not only provide a more livable environment but will reduce monetary costs to already overburdened city budgets.

If each nation were to set its own standards on acceptable noise levels for international flights, the result would be confusion and perhaps a breakdown in international air regulation. Because the introduction of aircraft types could increase aircraft noise, and because the problem of aircraft noise was so serious, ICAO called an international conference on aircraft noise. From this meeting came annex 16 to the Convention on International Civil Aviation.

Annex 16 sets maximum noise levels for aircraft, but it is applicable only to aircraft types certified for airworthiness after March 1, 1972, if of engine type bypass ratio 2 or more—747, L-1011, DC-10—or after January 1, 1969, for other subsonic jet aircraft. This means the 737, 727, 707, DC-8, DC-9, and some 747's are not covered.

In March, and again in late summer of this year, preliminary meetings of the International Civil Aviation Organizations Convention on Aeronautical Noise will take place. These meetings seek to improve and extend the international accord on reducing aeronautical noise. To alleviate the severe noise pollution problem that is increasing day by day, the United States should take the position at these meetings, and in the agreement that will hopefully be reached, that subsonic jet aircraft used in international flights and exceeding aircraft engine noise levels prescribed in annex 16 should be retrofitted or modified to reduce aircraft engine noise so as not to exceed such levels.

The cost, both human and monetary, of increasing noise pollution requires that immediate steps be taken to reduce intolerable noise levels. Aircraft are one of the worst offenders. The technology exists to prevent excessive aircraft noise levels and it should be used.

The United States should also take the position that annex 16 standards should be reduced by 10 EPNdb. This means the basic acceptable noise level should be reduced from 108 EPNdb to 98 EPNdb. It is considered that 10 EPNdb is the maximum level of noise people can tolerate, according to acoustical engineer Randall Hurlburt; 90 EPNdb is considered the minimum level people will accept in their environment. A level of 90 EPNdb is the goal we must be working toward. The technology exists to retrofit aircraft engines, reducing noise

to 10 EPNdb. It is expensive, but not prohibitively so. The many benefits such as reduced hearing loss and a more tension-free environment are worth the cost. Noise levels must be lowered now at least to the maximum level people can tolerate, and in the future noise standards should be further reduced.

The resolution is as follows:

S. RES. 285

Resolved, That it is the sense of the Senate that, at the preliminary meetings of the International Civil Aviation Organization Convention on Aeronautical Noise, to be held in Canada in March and August, 1972, and with respect to any agreement resulting from such meetings, it should be the position of the United States that any aircraft, of a type that is not presently used for international flights and hereafter is used for such flights, should have aircraft engine noise levels that are not in excess of 10 EPNdb below levels now prescribed in Annex 16 of the Convention on International Civil Aviation.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENTS

AMENDMENT NO. 1077

(Ordered to be printed and referred to the Committee on Finance.)

Mr. ROTH. I am submitting this morning an amendment to H.R. 1, the omnibus welfare, medicare, and social security legislation which is now under consideration by the Committee on Finance. Joining me as cosponsors of this amendment are the distinguished Senator from Alabama (Mr. ALLEN), the distinguished Senator from Tennessee (Mr. BROCK), the distinguished Senator from New York (Mr. BUCKLEY), the distinguished Senator from Colorado (Mr. DOMINICK), the distinguished Senator from Arizona (Mr. GOLDWATER), the distinguished Senator from Florida (Mr. GURNEY), and the distinguished Senator from Georgia (Mr. GAMBRELL).

In essence, it asks that the Congress authorize a 2-year test of both the new family assistance plan, with its uniform minimum benefits, and the newly conceived "workfare" plan, the opportunities for families program.

The language is similar to a measure adopted in 1970 when the Finance Committee reported out H.R. 17550, the previous welfare reform bill which failed to pass the Senate during the 91st Congress. The administration would be required to design two or four tests—half welfare, the other half "workfare"—to implement these tests in representative demographic areas, and to report to the Congress at least every 6 months on their substantive and administrative successes and failures. Separate evaluations and reports would be submitted both to the administration and the Congress by the Comptroller General.

At the end of the 2 years, the Congress would have a ledger of evaluation from which to enact more permanent legislation.

THE NEED FOR TESTING

Mr. President, H.R. 1 has been as hotly debated in the House as any piece of social legislation in recent years. Supporters of the bill cite the alarming statistics which show that the number of

beneficiaries under Aid to Families with Dependent Children has risen 147 percent in the 1960's. Even more recently 2.25 million people were added to the AFDC rolls during 1970. Costs too have climbed to such levels that many State treasuries are close to the breaking point, not to mention the increased costs of the Federal participation. Clearly these are intolerable developments. We must act to reverse this deteriorating trend.

Yet, opponents of the measure have argued that the family assistance benefits are either too generous, and thereby too costly, or too small to make any significant impact on the deplorable conditions of poverty currently prevailing in all parts of this country.

How are we to really know? At the present time, HEW and OEO are funding four limited experiments of income maintenance programs. However, an excellent report by the Finance Committee on the status of these experiments points out that only one, the New Jersey test, has been in operation long enough to permit any realistic evaluation, and that all four differ substantially from the House passed legislation.

These are pioneer social laboratories, and valuable for their contribution to our understanding of complex economic and behavioral issues. None of them, though, deals directly with the "workfare" elements of this legislation, and their welfare benefit levels are higher than the \$2,400 approved so far under H.R. 1. In a sense, we have only reached the wind tunnel. What I am proposing is not only a mock up, but a full 2-year flight test for admittedly sweeping legislation.

IMPACTS OF THE LEGISLATION

Anyone who has reviewed the comprehensive committee report on the bill can not help but be struck by the enormous impact of these proposed reform measures. According to committee estimate, corroborated by the Treasury, H.R. 1 would cost at least an additional \$5.5 billion in fiscal year 1973, and a total of \$23.5 billion by the end of its currently authorized 5-year life. And if the medicare experience is any precedent, these estimates will prove to be on the low side. During fiscal year 1973, 10½ million additional people will become eligible for welfare or "workfare" benefits, bringing the total number of assisted people to more than 12 percent of our Nation's population. In Puerto Rico, eligible beneficiaries will nearly triple to roughly 1 million, meaning that one person in every three there will be under public assistance. Many States would better than double their welfare roles; every State would, of course, have its welfare lists increased.

The current panoply of combined Federal-State programs makes accurate prediction an impossible task. What will be the effect of increased benefits in the 22 States where a family of four now receives less than the \$2,400 suggested minimum? Will the family in Alabama, now eligible for \$720 in cash aid, react differently to the plan than the family in New York where cash benefits total \$3,240? Can we assume that the family head in Nevada, currently eligible for \$1,330 per year, will register for work

training when he will receive \$1,600 under the proposed new scheme—\$2,400 minimum less the \$800 penalty imposed for people who fail to register under the "workfare" portion of the bill?

ADMINISTRATIVE PROBLEMS

Mr. President, in addition to this critical problem of work incentives, we must all face the fact that the proposed legislation will, at first, produce an administrative nightmare.

New procedures must first be developed to establish what is a family's true income. Documented proof will be required to establish bona fide beneficiaries. Many offices of HEW, and the Department of Labor will have to interact with probably hundreds of State and local agencies to verify incomes and beneficiaries, enroll 1.4 million new welfare families, provide job training and placement in an additional 2.6 million families, establish and administer day care centers to accommodate millions of children.

Can we logically expect to implement these vast procedures all at once? Can we not expect legitimate beneficiaries to be denied services due to a massive bureaucratic overload? And can we really feel comfortable launching a nationwide welfare reform system when the Comptroller General has only last week reported to us that HEW has had major problems establishing a system of quality control to assure that only currently eligible recipients receive welfare benefits.

This is a most enlightening report which I commend to all my colleagues, and I should like to ask unanimous consent that the digest of this analysis be included at this point in the RECORD.

There being no objection, the digest was ordered to be printed in the RECORD, as follows:

[Comptroller General's Report to the Congress]

PROBLEMS IN ATTAINING INTEGRITY IN WELFARE PROGRAMS—SOCIAL AND REHABILITATION SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

WHY THE REVIEW WAS MADE

Whether welfare assistance payments are being provided to eligible persons only is a source of increasing national concern aroused by the following facts.

From fiscal year 1960 to fiscal year 1971, Federal and State welfare costs more than tripled—from \$2.8 billion to \$8.7 billion.

The number of recipients increased from 5.8 million to 14.3 million.

The General Accounting Office (GAO) examined the effectiveness of the quality control system used by the States, to ensure that public assistance funds were being provided to eligible persons only and that public assistance programs were being managed fairly and efficiently. This system was developed by the Department of Health, Education, and Welfare (HEW).

GAO's review was made in California, Colorado, Louisiana, Maryland, Michigan, New York, Ohio, and Texas. These eight States spent about 50 percent of all Federal welfare funds in fiscal year 1971.

Background

The quality control system was adopted by HEW in 1964 for evaluating eligibility under the welfare programs. It is an adaptation of a technique which is used widely in industry for evaluating the quality of products and

services. In October 1970 HEW required the States to implement a revised quality control system. The new system was based on experience under the prior system and on the States' increasing use of simplified method of determining applicants' eligibility.

Under the new system cases are selected on a statistical-sampling basis and are investigated to see whether the eligibility of recipients and the amounts of payments are within established levels of accuracy. If they are not, the States must identify the inaccuracies and take necessary corrective actions.

FINDINGS AND CONCLUSIONS

Benefits from the implementation of a well-conceived quality control system can be achieved only through effective Federal and State administration. Adequate staffing and timely resolution of problems are essential to effective administration.

The Federal quality control system had not been implemented fully in the eight States at the time that GAO completed its fieldwork (July 1971). Consequently quality control has not accomplished its purpose of maintaining integrity over the public assistance programs.

HEW does not know whether rates of ineligibility and incorrect payments are within established levels of accuracy.

The problems encountered in implementing and operating the quality control system are complex, as shown below.

HEW's problems

HEW decided that the Federal quality control system should be implemented as soon as possible after its design was completed. HEW's organization however, was not ready to deal with many of the complexities of implementing a system that required close cooperation between the Federal Government and the States.

HEW recognized, 5 months prior to the system's implementation, that 55 additional staff members were needed—45 for the regional offices and 10 for headquarters. As of September 1971—almost a year later—only 19 of these positions had been filled. (See p. 40.)

HEW was only marginally successful in obtaining State recognition of the importance of quality control and of the need to commit the resources necessary to ensure its success. (See p. 45.)

Once the quality control system was in operation, HEW was able to recognize the problems that the States were having with it. HEW's regional offices, because of insufficient staff and limited knowledge of the system, usually were able only to react to State problems as they occurred rather than to anticipate them and assist States in avoiding the problems.

States' problems

All States visited by GAO had encountered problems in carrying out quality control activities. These problems varied in intensity from State to State. (See p. 12.) Two States—California and New York—had not implemented the Federal system statewide as of July 1971 but had attempted to use other methods to control public assistance expenditures. The methods used were not designed to meet Federal objectives. (See p. 28.)

The remaining six States—which implemented the system statewide—encountered one or more of the following problems.

Staffing—As of April 30, 1971—7 months after the Federal system was to be implemented—only Colorado and Michigan had met their staffing needs. Insufficient staffing continues to be a major problem limiting quality control's effectiveness. (See p. 12.)

Investigations—HEW specified the number of cases to be reviewed in each State so that reliable statistical projections could be made concerning the total number of cases. None of the six States, however, completed

the required number of quality control reviews for the quarter October to December 1970, although Colorado and Ohio came close. (See p. 16.)

For those cases that were reviewed, ineligibility rates or incorrect payment rates generally were high. Although these sample results could not be used for statistical-projection purposes for the total number of welfare cases, GAO believes that some error rates were sufficiently high—in view of the number of cases reviewed—for the States to have taken corrective action. (See p. 18.)

Verification—HEW requires that independent verification and documentation of all aspects of eligibility and payment be pursued to the point at which decisions on eligibility and the amounts of payment are conclusive. About 90 percent of the completed quality control reviews analyzed by GAO had not done this.

HEW guidelines did not specify the extent and types of verification to be obtained. For example, if recipients stated at the time of initial application that they had no savings or earnings, this information was reaffirmed in an interview and was accepted by reviewers without further attempts at verification. Use of additional sources—such as employment offices and local credit bureaus—to verify eligibility information could enable States to make more accurate decisions as to eligibility and amounts of payment. (See p. 19.)

GAO analyzed 150 quality control reviews in Colorado and Maryland and in Cuyahoga County, Ohio (50 cases selected at random from each). Had reviewers used additional sources, they could have had more assurance that their eligibility and payment decisions were accurate. (See p. 22.)

Pending legislation

Under pending welfare reform legislation (H.R. 1), HEW would take over administration of all federally assisted welfare programs and would have sole responsibility for quality control. GAO believes that HEW's plans for carrying out this proposed change, if effectively implemented, could restore public confidence in the integrity of the welfare programs.

Because the present Federal quality control system is to be the basis for such a system in the welfare reform program being considered by the Congress, HEW should make a concentrated effort to solve the problems in the present system not only to help accomplish the objectives of the present system but also to provide an adequate basis for the development of the quality control system to be used in the welfare reform program. (See p. 43.)

RECOMMENDATIONS OR SUGGESTIONS

HEW should:

Ensure, through appropriate efforts, that top State officials are aware of the benefits to be derived from an effective quality control system.

Increase headquarters and regional office quality control staffs to a level at which they can effectively assist and monitor State quality control operations.

Define, for the guidance of State and local quality control reviewers, necessary steps to be considered as requirements in determining recipients' resources, incomes, and other eligibility factors so that quality control investigations can provide conclusive findings. (See p. 46.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

HEW has stated that:

Its regional commissioners are taking vigorous action to ensure that States which do not have fully operational quality control systems comply with Federal regulations.

Training seminars are being conducted for its regional staff so that they can provide assistance to States for realizing fuller use of quality control as a management tool.

As of March 1972 all but one of the 55 authorized quality control staff members had been hired, and a request has been submitted to the Congress for additional staff members.

It is developing additional guidelines for issuance to State agencies so that quality control investigations can provide conclusive findings.

The actions taken or planned by HEW should strengthen the quality control system and should make it more effective. (See p. 47.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report provides the Congress with timely information for its consideration of welfare legislation and also provides the appropriations committees with information for their consideration of HEW's request for additional quality control staff members. It contains no recommendations requiring legislative action.

THE WISE MIDDLE COURSE

Mr. ROTH. Mr. President, none of us here knows exactly what the Finance Committee will do to modify H.R. 1, or what amendments will be accepted on the floor. Nor can we predict the outcome of the almost certain conference which will be required. Nevertheless, this is bound to be bold legislation, reaching every State and millions of disadvantaged people.

I am deeply concerned with the plight of current welfare programs, with the mounting costs in dollars and family desertions. We cannot ignore these problems, they are a growing blight on our society. I am not opposed to welfare reform, it is an absolutely essential priority if we are to come to grips with the abuses and mistakes of the current patchwork.

But I am asking that we insist on careful and objective analysis of whatever legislation eventually is enacted. I am asking for a 2-year test of family assistance and workfare, for timely and accurate evaluation and reporting both by the Federal agencies involved and the independent Comptroller General. Then, with experience, rather than conjecture, we can act to implement, nationwide, the necessary and workable, welfare reforms this country most certainly needs.

Mr. President, I ask unanimous consent that the amendment be printed at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1077

Beginning on page 326, line 9, strike out all through page 400, line 22, and insert in lieu thereof the following:

TITLE IV—TESTING OF ALTERNATIVES TO PROGRAMS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

AUTHORIZATION FOR CONDUCT OF TEST PROGRAMS

SEC. 401. (a) For purposes of this section—

(1) The term "family assistance test program" means a program which contemplates that—

(A) the assets and resources of families will (except to the extent otherwise prescribed by the Secretary) be taken into account in determining eligibility for or amount of payments under the program;

(B) there will be established minimum income levels for families of various sizes;

(C) money payments will be made (periodically) to families whose income is less than the applicable minimum income level so established;

(D) such money payments will be denied to any adult member of a family (other than such a member who is ill, aged, or disabled, is caring for another member of such family who is ill or disabled, or is caring for another member of such family who is a child of pre-school age) who refuses without good cause to accept employment or participate in a vocational training or similar training program which is designed to prepare such member to engage in employment;

(E) incentives for members of families to engage in employment will be provided by disregarding a portion of the earnings of such family for purposes of determining eligibility for and the amounts of the money payments payable to such family under the program; and

(F) there will be provided to the families participating in such program (in appropriate cases) (i) placement and employment training services, (ii) child care services when needed to facilitate participation, by adult members of such families, in employment or a vocational training or similar training program, (iii) family planning services, and (iv) other appropriate supportive services.

(2) The term "workfare test program" means a program which contemplates that—

(A) the assets and resources of families will (except to the extent otherwise prescribed by the Secretary) be taken into account in determining eligibility to participate in the program;

(B) families headed by an adult, who (by reason of advanced age, illness, or disability, caring for another member of the family who is ill or disabled, or caring for a member of such family who is a child of pre-school age) is presumed to be unable to engage in employment, will be entitled to receive welfare assistance in the form of money payments the amount of which shall be based on standards of need developed for families of various sizes, with provision for disregarding a portion of the earnings of such family for purposes of determining eligibility for and the amounts of the money payments payable to such family under the program;

(C) adult individuals who are heads of families and who are unemployed (or underemployed) will be eligible to register to participate in employment or in a training program designed to qualify them for specific jobs available in the locality in which they live;

(D) all registrants will be placed in employment (including subsidized public service employment) or such a training program;

(E) registrants placed in employment for wages at less than the rate of the minimum wage would receive wage supplement payments (in amounts which shall not be greater than the difference between any registrant's hourly wage and the minimum wage) for hours (not in excess of 40 hours for any week) during which work is performed by them in such employment;

(F) training allowances would be paid to registrants with appropriate reductions in the amount of such allowances in cases where registrants participate in training on less than a full-time basis; and

(G) there will be provided to the families participating in such program (i) child care services when needed to facilitate participation, by any registrant, in employment or a vocational training or similar training program, (ii) family planning services, and (iii) other appropriate supportive services. (3) The term "family" means a family with children.

(b) (1) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") is authorized, effective January 1, 1973, to plan for and conduct, in accordance with the provisions of this section, not more than four test programs. One-half of such programs shall be

family assistance test programs and one-half of such programs shall be workfare test programs.

(2) Whenever a family assistance test program is commenced, there shall commence, on the same date as such program, a workfare test program, and both such programs shall (except as may otherwise be authorized by the Congress) terminate on the same date. Except as may otherwise be authorized by the Congress, no test program under this section shall be conducted for a period of less than 24 months.

(3) Any such test program shall be conducted only in and with respect to an area which consists of a State, one or more political subdivisions of a State, or part of a political subdivision of a State, and shall be applicable to all the individuals who are residents of the State or the area of the State in and with respect to which such program is conducted.

(4) During any period for which any such test program is in effect in any State or in any area of a State, individuals residing in such State or the area of the State in which such program is in effect shall not be eligible for aid or assistance under any State plan or program for which the State receives Federal financial assistance under part A of title IV of the Social Security Act.

(5) The Secretary, in determining the areas in which test programs under this section shall be conducted, shall select areas with a view to assuring—

(A) that the number of participants in any such program will (to the maximum extent practicable) be equal to the number of participants in any other such program; and

(B) that the area in which any family assistance test program is conducted shall be comparable (in terms of size and composition of population, of average per capita income, rate of unemployment, and other relevant criteria) to an area in which a workfare test program is conducted.

(c) (1) No test program under this section shall be conducted in any State (or any area thereof) unless such State shall have entered into an agreement with the Secretary under which the State agrees—

(A) to participate in the costs of such test program; and

(B) to cooperate with the Secretary in the conduct of such program.

(2) Under any such agreement, no State shall be required to expend, with respect to any test program conducted within such State (or any area thereof), amounts greater than the amounts which would have been expended with respect to such State or area thereof (as the case may be), during the period that such test program is in effect, under the State plan of such State approved under part A of title IV of the Social Security Act. For purposes of determining the amount any State would have expended under such a plan during the period that any such test program is in effect within such State (or any area thereof), it shall be assumed that the rate of State expenditure (from non-Federal funds) under such plan would be equal to the average rate of State expenditure (from non-Federal funds) under such plan for the 12-month period immediately preceding the commencement of such test program.

(d) (1) The Secretary shall, upon completion of any plans for and prior to the commencement of any test program under this section, submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a complete and detailed description of such program and shall invite and give consideration to the comments and suggestions of such committees with respect to such program.

(2) During the period that test programs are in operation under this section, the Secretary shall from time to time (but not less frequently than once during any 6-month

period) submit to the Congress a report on such programs which shall contain full and complete information and data with respect to such programs and the operation thereof, together with such recommendations and comments of the Secretary with respect to such programs as he deems desirable.

(3) At the earliest practicable date after the termination of all test programs authorized to be conducted by this section, the Secretary shall submit to the Congress a full and complete report on such programs and their operation together with (A) the Secretary's evaluation of such programs and such comments or recommendations of the Secretary with respect to such programs as he deems desirable (B) his recommendations (if any) for legislation to revise or replace the provisions of part A of title IV of the Social Security Act.

(e) (1) The Secretary shall—

(A) in the planning of any test program under this section; or

(B) in assembling information, statistics, or other materials, to be contained in any report to Congress under this section;

consult with, and seek the advice and assistance of, the General Accounting Office and the General Accounting Office shall consult with the Secretary and furnish such advice and assistance to him upon request of the Secretary or at such times as the Comptroller General deems desirable.

(2) The operations of any test program conducted under this section shall be reviewed by the General Accounting Office, and the books, records, and other documents pertaining to any such program or its operation shall be available to the General Accounting Office at all reasonable times for purposes of audit; review, or inspection. The books, records, and documents of each such program shall be audited by the General Accounting Office from time to time (but not less frequently than once each year).

(3) During the period that test programs are in operation under this section, the Comptroller General shall from time to time (but not less frequently than once during any 6-month period) submit to the Congress a report on such programs which shall contain full and complete information and data with respect to such programs and the operation thereof, together with such recommendations and comments of the Comptroller General with respect to such programs as he deems desirable.

(4) At the earliest practicable date after the termination of all test programs authorized to be conducted by this section, the Comptroller General shall submit to the Congress a full and complete report on such programs and their operation together with his evaluation of, and comments and recommendations (if any) with respect to, such programs.

(f) In the administration of test programs under this section, the Secretary shall provide safeguards which restrict the use or disclosure of information identifying participants in such programs to purposes directly connected with the administration of such programs (except that nothing in this subsection shall be construed to prohibit the furnishing of records or information concerning participants in such programs to the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives).

(g) For the purpose of enabling the Secretary to formulate operational plans and to conduct test programs under this section, there are authorized to be appropriated for each fiscal year such sums as may be necessary.

TEMPORARY AND EXPERIMENTAL NATURE OF TEST PROGRAMS

Sec. 402. It is the intention of the Congress, after the termination of the test programs authorized to be conducted under sec-

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tion 401, and after all reports required with respect to such program under such section have been submitted to the Congress, to study the matter of whether permanent legislation should be enacted permanently to establish, in lieu of the existing program of aid to families with dependent children (established by part A of title IV of the Social Security Act), some type of family assistance program or programs.

(b) Nothing in this Act shall be construed as a commitment, on the part of the Congress, to enact (at any future time) legislation to establish, on a permanent basis, any program tested pursuant to section 401 or any similar program.

On page 401, lines 4 and 5, strike out "titles III and IV" and insert in lieu thereof "title III".

On page 401, beginning with line 9, strike out all through line 25, and insert in lieu thereof the following: "except that appropriations for administrative expenses incurred during the fiscal year ending June 30, 1972, in developing the staff and facilities necessary to place in operation the program established by title XX of the Social Security Act, as added by this Act, and for child care furnished pursuant to section 508 during such fiscal year, may be included in an appropriation Act for such fiscal year."

On page 402, beginning with "Act" on line 8, strike out all before "Act" on line 11.

On page 402, line 18, strike out "or XXI".

On page 403, lines 13 and 14, strike out "and families".

On page 403, line 19, strike out "or XXI".

On page 403, line 22, strike out "and families".

On page 403, line 23, strike out "or XXI".

On page 404, line 7, strike out "or family".

On page 404, line 20, strike out "sections 2016 and 2156" and insert in lieu thereof "section 2016".

On page 404, line 24, strike out "and part A of title IV".

On page 405, line 5, strike out "or family".

On page 405, line 10, strike out "or XXI".

On page 405, line 12, strike out "or 2153(b)".

On page 405, line 13, strike out "or family".

On page 405, line 16, strike out "or family".

On page 405, line 17, strike out "or 2156".

Beginning on page 405, line 25, strike out "or family of a given size".

On page 406, line 3, strike out "part A of title IV".

On page 406, line 17, strike out "or families".

On page 406, lines 25 and 26, strike out "and part A of title IV".

On page 407, lines 5 and 6, strike out "or family".

On page 407, line 8, strike out "or family".

On page 407, line 10, strike out "or family".

On page 407, line 11, strike out "it" and insert in lieu thereof "he".

On page 407, line 11, strike out "its" and insert in lieu thereof "his".

On page 407, line 23, strike out "and part A of title IV".

On page 408, beginning with "emergency" on line 1, strike out all through "Act," on line 3.

On page 408, line 12, strike out "403".

On page 409, strike out lines 1 through 7.

On page 410, beginning with "(or)" on line 18, strike out all through "XXI" on line 20.

On page 411, line 2, strike out "or under part A or part B of title XXI".

Beginning on page 411, line 5, strike out all through page 412, line 11.

On page 412, lines 23 and 24, strike out "part A of title IV".

On page 413, line 1, strike out "sections 301 and 401" and insert in lieu thereof "section 301".

On page 413, beginning with "(other)" on line 1, strike out all through "Act)" on line 5.

On page 413, beginning with "; except" on line 6, strike out all before the period on line 10.

On page 413, strike out lines 11 through 23.

On page 414, line 7, strike out "and families".

On page 414, line 11, strike out "sections 2016 and 2156" and insert in lieu thereof "section 2016".

On page 414, line 17, strike out "sections" and insert in lieu thereof "section".

On page 414, line 22, strike out "sections" and insert in lieu thereof "section".

On page 414, line 22, strike out "or family".

On page 414, line 23, strike out "or XXI".

On page 415, line 4, strike out "or family".

On page 415, line 6, strike out "or part A of title IV".

On page 415, line 19, strike out "or 2156".

On page 416, line 2, strike out "or 2154 (b) (5)".

Beginning on page 416, line 5, strike out all through page 418 line 3.

On page 418, line 4, strike out "(b)" and insert in lieu thereof "Sec. 511."

On page 447, lines 13 and 14, strike out "or part A or part B of title XXI" and insert in lieu thereof "or receives aid in the form of money payments in such month under a State plan approved under part A of title IV".

On page 447, line 19, insert "and" after "1101 (a) (1)".

On page 447, line 21, strike out the comma at the end of the line and insert in lieu thereof a period.

On page 447, strike out lines 23 through 25.

On page 448, lines 11 and 12, strike out "or any family pursuant to part A or part B of title XXI".

On page 448, line 14, strike out "or family".

On page 448, line 15, strike out "of part A or B of title XXI".

On page 448, line 18, strike out "or part A or B of title XXI" and insert in lieu thereof "or part A of title IV".

On page 451, line 9, strike out "sections 302 and 402" and insert in lieu thereof "section 302".

On page 452, line 8, insert, immediately before the semicolon at the end of the line, the following: "and inserting in lieu thereof 'receiving money payments under the Plan of a State approved under part A of title IV, or'".

On page 452, line 14, insert, immediately before the period at the end thereof, the following: "and inserting in lieu thereof 'individuals receiving money payments under a plan of the State approved under part A of title IV, and'".

On page 452, beginning with the word "by" on line 20, strike out all through "and" on line 23.

On page 453, lines 21 and 22, strike out "receiving assistance to needy families with children as defined in section 405(b)" and insert in lieu thereof "receiving aid under a State plan approved under part A of title IV (or meet the income and resources requirement of such State plan)".

On page 454, lines 6, 7, and 8, strike out "who are not receiving assistance to needy families with children as defined in section 405(b)" and insert in lieu thereof "who are not receiving aid under a State plan approved under part A of title V."

On page 454, line 13, strike out "title I, X, XIV, or XVI, or".

On page 455, beginning with "or would" on line 10, strike out all through "405(b)" on line 13, and insert in lieu thereof "eligible for aid under a State plan approved under part A of title IV".

On page 455, lines 23 and 24, strike out "assistance to needy families with children as defined in section 405(b)" and insert in lieu thereof "money payments under a State plan approved under part A of title IV".

On page 456, lines 15 and 16, strike out "assistance to needy families with children as defined in section 405(b)" and insert in lieu thereof "aid under the State's plan approved under part A of title IV".

On page 456, strike out lines 20 through 25.

On page 457, strike out "(C)" and insert in lieu thereof "(B)".

On page 457, line 6, strike out "(D)" and insert in lieu thereof "(C)".

On page 457, line 10, strike out "(F)" and insert in lieu thereof "(D)".

AMENDMENT NO. 1078

(Ordered to be printed and referred to the Committee on Finance.)

SENATOR HUMPHREY PROPOSES 25-PERCENT INCREASE IN RETIREMENT BENEFITS

Mr. HUMPHREY. Mr. President, I am today introducing legislation that would provide a 25-percent increase in social security benefits for the senior citizens of our Nation.

This legislation would provide a start, a downpayment on adequate income for this country's older Americans. It is a badly needed measure—for the elderly are constantly beset by increasing cost for homes, food, property taxes, mortgages, rents, transportation, medical services, and hospital costs. Yet, many of our elderly must pay for these things out of a fixed, level income. Few of our elderly have any prospect of work, few have any prospect of seeing their income increase every year, and almost all of our elderly constantly ask themselves, "How are we going to pay our bills? How are we going to make ends meet?"

Mr. President, I see significant and far-reaching changes coming in our social security and railroad retirement benefit programs. Many of us in Congress have proposed new methods of financing these programs in order to increase benefits and decrease the tax burden on the working man.

This kind of financing is overdue. We ought not let the social security trust fund build up huge surpluses, while at the same time the basic benefits remain low.

It is in this spirit that I introduce a 25-percent increase amendment to H.R. 1 today. And it was in this spirit that I have previously introduced legislation that would begin a system of general revenue contributions to the trust fund, increase the contributions ceiling, lower the tax rates, and institute a minimum payment.

Mr. President, this amendment is necessary, it is honorable, it is required. I would hope that the Senate Finance Committee would give it a prompt and immediate hearing.

AMENDMENT NO. 1079

(Ordered to be printed and referred to the Committee on Finance.)

Mr. HARTKE submitted an amendment intended to be proposed by him to

the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State Public Assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives and requirements for employment and training to improve the capacity for employment of members of such families, and for other purposes.

SENATE INTERVENTION IN SUPREME COURT PROCEEDINGS—AMENDMENTS

AMENDMENTS NOS. 1080, AND 1083

(Ordered to be printed and to lie on the table.)

Mr. SAXBE submitted two amendments intended to be proposed by him to the resolution (S. Res. 280) authorizing Senate intervention in the Supreme Court proceedings on the issue of the scope of Article I, section 6, the so-called speech-and-debate clause of the Constitution.

AMENDMENT NO. 1081

(Ordered to be printed and to lie on the table.)

Mr. SAXBE (for himself and Mr. DOMINICK) submitted an amendment intended to be proposed by them jointly to the resolution (S. Res. 280), supra.

AMENDMENT NO. 1082

(Ordered to be printed and to lie on the table.)

Mr. SAXBE (for himself and Mr. MATHEIAS) submitted an amendment intended to be proposed by them jointly to the resolution (S. Res. 280), supra.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 938

At the request of Mr. HARRIS, the Senator from New York (Mr. JAVITS) was added as a cosponsor of Amendment No. 938 intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1972.

AMENDMENT NO. 1059

At the request of Mr. Boggs, the Senator from Pennsylvania (Mr. SCOTT) was added as a cosponsor of Amendment No. 1059 intended to be offered to the bill (S. 2760) to amend the Rail Passenger Service Act of 1970 in order to provide financial assistance to the National Railroad Passenger Corporation for the purpose of purchasing railroad equipment, and for other purposes.

ADDITIONAL STATEMENTS

ELEMENTARY SCHOOL PUPILS PLAN OWN NOON MEALS

Mr. ROTH. Mr. President, recently it has been called to my attention that the pupils at the Richard A. Shields Elementary School in Lewes, Del., are engaged in planning their own noon meals

as a result of a program on nutritional education being carried out by Mrs. Betty V. Fisher and Mrs. Alice C. Allen, cafeteria staff members, under the guidance of Mrs. Ann M. Cerney, cafeteria manager and the school principal, Frederick D. Thomas.

I believe his activity merits the attention of all citizens who are concerned with the well-being of our Nation's schoolchildren. The knowledge gained by this practical experience in meal planning should serve to instill in each youngster the sound habits of eating which are so vital to their physical and mental development.

I ask unanimous consent that an article describing this program, published in the Delaware Coast Press on March 2, 1972, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LEWES STUDENTS PLANNING NOON MEAL

Four hundred and thirty students have been planning the noon meals for the Richard A. Shields Elementary School in Lewes since Feb. 14 as part of a program on nutritional education. The program is being carried out by Mrs. Betty V. Fisher and Mrs. Alice C. Allen, cafeteria staff members, with the cooperation and guidance of Mrs. Ann M. Cerney, cafeteria manager, and the school principal, Frederick D. Thomas.

Mrs. Fisher and Mrs. Allen are presently enrolled in the third unit of a school food service training program which meets for three hours a week for ten weeks at the Sussex Central High School.

In preparation for the student-planned menus, Mrs. Cerney distributed to each teacher in the third, fourth and fifth grades a health directive from the State Department of Public Instruction which stresses that educators can teach more effectively if their students are properly nourished. The publication showed current studies and research which proved an alarming decline in the physical condition of American youth in all economic and social groups.

In order to enlighten the students, teachers, and hopefully, through the students—their parents, about the National School Lunch program's requirements and values this new school project of the students preparing the menus was undertaken.

The National School Lunch Program was begun in 1946. It operates each school day and uses in excess of a billion dollars worth of food a year for the over nineteen million children that it reaches. The overall national plan is "to close the nutrition gap between food available at home and total food needs, thus meeting current nutritional needs for the child's growth and development and to shore up some nutritive reserves for the child's future growth, development, and well-being."

For the local plan, each classroom teacher at Shields School was given a Type "A" pattern for developing a lunch menu. All 15 classes were invited to participate and the local program will continue until each class has had its turn. The following menu pattern, which includes one third of the daily requirements for a 9-12 year old, is put on the chalk board and explained to each class: two ounces of cooked meat or protein, $\frac{3}{4}$ cup of vegetable and or fruit, one slice enriched or whole grain bread, one tablespoon butter or fortified margarine, and $\frac{1}{2}$ pint of whole milk.

Four basic foods had to be included in the menu which was chosen by each class. A variety of suggestions were placed on the board, then eliminated by a voting process. Each menu selected by a class was submitted to the cafeteria in the form of a colorful poster

which included pictures of the finished meal. The posters were displayed on a bulletin board in the cafeteria.

On the public address system during the morning announcements, a special tribute was given each day to the class which had prepared that day's menu.

A typical menu planned by Mrs. Barbara T. Smith's fourth grade class included fried chicken, mashed potatoes and gravy, tossed salad, homemade rolls, cherry pie, and milk.

An evaluation project was requested by the cafeteria staff and the form was left to the discretion of each teacher. Mrs. Smith's class chose to write formal letters of appreciation to the cafeteria staff and they were bound in a colorful folder entitled "Our Letters to the Cooks." The following quotations were taken directly from those letters:

"I enjoyed every meal you people cooked. All of you cook very nicely. I know all of you work very hard for the school."

"We liked the lunch. I hope every one liked it, even the teachers."

"I enjoy eating your food any day."

"It really was fun making up our own menu."

"It was so delicious that I could have some more, but I didn't want to be greedy. But boy I tell you that was so good."

"It took a long time to make up the menu. I liked everything but the salad, but everything else was divine."

"I voted for just about everything but the cranberry sauce."

"We did not pick pizza because we thought that most of the other classes would."

"The whole lunch was fantastic and delicious."

CLOSING AND MOVING OF INDUSTRIAL PLANTS

Mr. HARRIS. Mr. President, the problem of industrial plants closing and moving out of communities has been with us for a long time now. In the last few years, however, due to the malfunctioning of the American economy, the problem has seriously intensified.

I believe other Senators will be interested in an article by William Wong in *The Wall Street Journal*, February 28, which describes steps taken by American Oil Co. to make the separation of one of its refineries in the town of El Dorado, Ark., as painless as possible.

American Oil, according to Mr. Wong, took the plant closing seriously and made this decision only when it became absolutely necessary. When the company finally decided on the closing, it was careful to inform the town 6 months in advance of the shutdown date.

American asked their "other facilities to freeze outside hiring, so that El Dorado employees could have the first crack at job openings." It also helped its employees find jobs in the El Dorado area if they did not wish to leave their homes. Moreover, it gave most of the plant grounds and buildings, worth about \$2.2 million, to the county in which the refinery is located.

Unfortunately, we have not yet reached the day when every company lives up to its responsibilities. As Mr. Wong also notes:

A "wholesome" approach, however, is far from universal. In many instances, workers are still suddenly assembled and summarily fired. In other cases, work forces are methodically trimmed creating an agonizing existence for those left on the job. They wonder when the ax with their name on it will fall. Plants involved in such gradual closings

are usually allowed simply to die, with little or no explanation from management.

Mr. President, while we may applaud the forward-looking policies of American Oil in providing for the workers it displaced when it closed its plant in El Dorado, it is clear that we cannot depend on enlightenment alone to solve the problems caused by runaway plants. There is need for some national answer to the dilemma faced by hundreds of communities across the Nation.

I believe that there is an answer in Federal chartering. First proposed in the last century and endorsed over the years by such national leaders as Woodrow Wilson, Federal chartering would enable the Federal Government to require from corporations certain obligations toward the community in which they were located before they received the right to incorporate. Federal chartering also would end the practice which permits corporations to shop among various States to gain the lowest taxes or other concessions in the long run detrimental to the public interest.

Today corporations can hold a gun at the head of many communities. They often force the community to invest heavily in new roads, sewers and schools all in order to create the necessary climate to attract the corporation in the first place. Then by subsequently threatening to leave for a more permissive climate in another State, they can compel a community to continue to maintain inadequate pollution standards or to set property taxes at an inequitable and low level for the corporations.

Federal chartering could end these abuses. It could insure that every State would compete in fairness for the benefits of new industry. I think we shall soon see that it is an idea whose time is come.

Mr. President, I ask unanimous consent that Mr. Wong's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the *Wall Street Journal*, Mar. 7, 1972]
A PLANT SHUTDOWN IS ALWAYS PAINFUL, BUT IT NEED NOT BE MERCILESS—AMERICAN OIL CO. IS HAILED FOR ITS "HUMANITARIAN" WAY OF CLOSING ONE REFINERY—A PARTING GIFT: 400 ACRES

(By William Wong)

EL DORADO, ARK.—Everywhere one looks around American Oil Co.'s refinery here, workers are busy. Some are carting shiny new parts in and out of warehouses. Others are piling personnel records and old inventory and supply records into boxes and attending a seemingly endless round of meetings with management. Things, in short, are humming.

But the flurry of activity is deceptive. It's not aimed at keeping the refinery going full blast. Instead, it's intended to accomplish just the opposite—a total shutdown—to be completed by March 1.

That's bad news for this peaceful southern Arkansas town of 28,000. For 50 years, the refinery has been one of El Dorado's economic mainstays. Employment at the refinery in recent years has averaged about 275, and property taxes paid by the facility have helped El Dorado achieve many a municipal improvement.

But as bad as the news is for El Dorado, it isn't as bad as it might be. The reason: American Oil is bending over backward to make the shutdown as painless as possible. From a public announcement nine full

months before shutdown day to extensive efforts to relocate workers at other American Oil operations, the company has tried mightily to hurt as few people as possible.

"A WHOLESOME APPROACH"

This approach isn't unique to Americans. In fact, it has been taken with increasing frequency in recent times as the sluggish economy has resulted in scores of plant closings. "Most companies have gotten away from the abrupt and brutal closings of years past," says Alfred E. Cummins, a professor at Case Western Reserve University's School of Management. Adds Sidney Kriser, president of Industrial Plants Corp., a plan liquidating firm: "Management today in general has a wholesome, more humanitarian approach to what happens to employees after their separation. Most publicly held companies are trying to do the best possible thing for their employees."

A "wholesome" approach, however, is far from universal. In many instances, workers are still suddenly assembled and summarily fired. In other cases, work forces are methodically trimmed, creating an agonizing existence for those left on the job. They wonder when the ax with their name on it will fall. Plants involved in such gradual closings are usually allowed simply to die, with little or no explanation from management.

But on the whole, experts contend, companies these days are leveling more often with their employees, telling them the bad news as straight as it can be told. That's certainly the feeling among workers at the American Oil refinery here, as well as among civic leaders and townspeople in El Dorado. American Oil, they say, has gone to extreme lengths to make sure everyone involved knew in advance what was coming, how it would be handled and the reasons behind the action. As the refinery closing also illustrates, shutting down a plant can be a complex and exhausting process.

A DIFFICULT DECISION

From the outset, of course, the decision to close the refinery was anything but easy for American Oil. About three years before the final decision, officials say, long-range projections made an eventual shutdown a distinct possibility. Then, in late 1969, according to Frank K. Webb, American Oil's manager for refining coordination, it became clear that a decision had to be made.

"We got some of our economists together and got three or four different approaches to the problem," says Mr. Webb, who is in charge of the shutdown. In effect, he says, the economists tried to determine whether the company, looking five or 10 years ahead, would still need the capacity of the old and relatively small El Dorado refinery. Some of the economists said the refinery, capable of turning 43,600 barrels of crude oil daily into gasoline, fuel oil and other petroleum products, should be closed; others disagreed. But finally, due to economic factors, the study group decided in early April that it would recommend a shutdown.

While the economists were debating, other members of the study group delved into other areas of consideration. One area, for example, was what to do with the refinery's crude oil supply, some of which was shipped from Texas and some obtained locally. Another was to investigate the company's projected manpower needs for the next five years to determine what could be done with the El Dorado employees.

"Nobody was happy or glad that we were closing El Dorado," Mr. Webb says, "but once the decision was made, everyone pitched in with great enthusiasm to do the best possible job of devising plans to close it down well."

A PRECISE TIMETABLE

After the shutdown decision was made, the group began to devise detailed plans to handle each phase of the shutdown, including a

precise timetable on how and when to announce the decision to employees, politicians and community leaders. The entire shutdown package was given final approval on May 6, 1971, by the directors of Standard Oil Co. of Indiana, American Oil's parent company.

All told, harsh economic realities forced the final shutdown decision. The refinery's main source of crude—from the El Dorado area—had dwindled to 52,000 barrels a day from 85,000 barrels a day in 1960. This supply in recent years has been shared by American Oil and a refinery operated by Lion Oil Co., a division of Monsanto Co. Thus, it was necessary for American Oil to make high-cost pipeline shipments of crude from Texas to El Dorado. In addition, officials say, the El Dorado refinery was "too small to meet the technological competition of larger refineries, which can operate more efficiently at lower per-barrel costs."

The announcement timetable was elaborate. The company set May 20, 1971—a full nine months before the scheduled shutdown date—as the day it would publicly announce its decision. Six days before the announcement, American Oil officials began hopscotching from Chicago (corporate headquarters) to Washington, D.C., to Little Rock to El Dorado. The purpose of all the travel was to explain to Arkansas' U.S. Senators and Representatives and key state and local officials why the company was closing the El Dorado facility. Moreover, American Oil sent out explanatory letters on May 18 to 150 civic and business leaders of El Dorado.

These elaborate advance briefings illustrate a lesson well learned by American Oil. Back in 1958, it abruptly closed a refinery in Destrehan, La.—without first telling local, state or federal politicians, who later complained loudly about the company's action. "We simply misjudged the political aspects" of the Destrehan closing, a company official admits.

The timing of the El Dorado announcement was particularly sensitive. The town was busily preparing for a big week-long celebration in June to commemorate the 50th anniversary of the discovery of oil in the area. Despite the obvious dampening effect American Oil's shutdown announcement might have on the impending gaiety, the company decided it couldn't wait beyond May 20. "We were concerned about our obligation to the employees to let them know the decision as soon as we could so that they might plan accordingly," says Larry Durland, the plant manager.

"We really searched our souls on this decision," sighs Mr. Webb. "We anguished over it more than anything else. It was fully two weeks that we wrestled with it."

Surprisingly, local leaders say the announcement didn't deflate the good times of the celebration. "It wasn't a hindrance nor did it hurt the celebration one bit," declares William Alley, executive director of the El Dorado Chamber of Commerce. A possible reason: American Oil participated fully in the celebration, contributing manpower and equipment to help set up (and then clean up) the replica of a 1920s oil-boom town.

May 20 itself was a day full of meetings, all for the purpose of telling what the company was doing and why. First, corporate officials and Mr. Durland, the plant manager, broke the news to the salaried employees. Then they faced local union leaders and groups of hourly workers. A press conference and a luncheon for civic leaders followed.

A GLOOMY PERIOD

Although rumors about the closing had been circulating for years, the actual announcement stung some like a slap on the face. Judge Carlton Jerry, the top county administrator, says the time of the announcement "certainly was a gloomy period of our people." John Phelps, chairman of the workmen's committee at the refinery, adds, "There were a lot of rumors, but still, when

the announcement came, it was a shock to all of us."

Once the initial shock subsided, the company set about resolving its biggest question: What to do with the refinery's 275 employees. The study group discovered that the projected manpower needs of the company's 10 other U.S. manufacturing facilities and other units exceeded the total number of El Dorado employees affected by the shutdown. Mr. Webb therefore asked the other facilities to freeze outside hiring so that El Dorado employees could have first crack at job openings.

With that beginning, the job-placement program for El Dorado workers launched into a series of questionnaires and personal interviews aimed at giving employees one of three choices: to transfer to another company facility at company expense; to seek a job outside the company in the El Dorado area, again with company assistance; or to take early retirement.

The bulk of the placement program centered on job-transfer interviews, which stretched from early June to late November. Representatives from seven different American Oil facilities visited El Dorado and conducted a total of 862 interviews. According to Joseph Feeney, employee relations director at the El Dorado plant, 176 of El Dorado's 214 hourly employees and 31 of its 61 salaried workers received one or more job offers from other company plants.

When all is said and done, the company figures it will spend about \$1 million for moving some 200 El Dorado employees to other company locations. Another \$700,000, it estimates, will be spent on severance and early-retirement benefits. The money factor played virtually no part in the company's decision to transfer, rather than simply lay off, El Dorado workers, Mr. Webb maintains. He says the average costs of severance-retirement and moving expenses are about equal—\$5,500 to \$6,000 per employee. In transferring El Dorado workers, Mr. Webb adds, the company benefits by retaining experienced workers. However, he says there's also a disadvantage, since transferred workers are generally older than workers hired from outside the company.

PLEASED EMPLOYEES

American Oil's efforts in helping workers find jobs has understandably pleased employees. "The company has bent over backwards for me," declares John Osborn, a 42-year-old mechanic who's transferring to the company's Whiting, Ind., refinery. Mr. Osborn surmises that "99%" of his fellow workers feel as he does. (The company paid for a week-long house-hunting trip to the Whiting area for Mr. Osborn and his wife and will pay moving and temporary living expenses when they get there.)

On the less sticky, but no less massive, question of what to do with the refinery property and machinery, American has made moves to benefit both the community and itself.

The refinery is located on about 440 acres of gently rolling hills. About 400 acres of the land will be donated to Union County. The company is currently negotiating to sell the other 40 acres to a pipeline company. The 400 acres to be given to the county adjoin a 600-acre industrial park, and Judge Jerry says the gift will be used for industrial purposes. The donation, valued by American Oil at \$2.2 million, includes the company's water wells and a number of standing structures such as the single-story brick administration building, warehouse, several shacks and a boiler room.

According to Mr. Webb, selling the land would have netted the company 75% (or about \$1.6 million at best) of the assessed valuation, after a 25% capital-gains tax, but would probably have required a long wait to find buyers. While donating, on the other hand, will net the company less money—a tax credit this year of about \$1.1 million—

the money in hand (through the tax credit) plus the positive impact on the community tipped the decision away from selling, Mr. Webb adds.

GIFTS TO CHARITY

Of the millions of dollars worth of machinery at El Dorado, American Oil is seeking to sell some refining units and other equipment to outside sources; other American Oil plants will also have a chance at claiming idled machinery. Office fixtures, such as furniture and filing cabinets, are being given to local charitable organizations and churches. And one of two plant fire trucks is being given to the nearby town of Norphlet.

Throughout the entire closing operation, American Oil corporate officials in Chicago have kept in constant touch with plant administrators. A recent visit to El Dorado by Mr. Webb was typical of the kind of corporate-plant coordination that has occurred.

After hearing a report from Mr. Durland, the plant manager, and his staff, on the current status of the job-placement program, Mr. Webb commented: "Well, it looks like we're in pretty good shape as far as the people situation is concerned." On the issue of machinery disposal, he declared: "Here's what I propose—we turn our purchasing people loose to start soliciting bids from 'junkies' (scrap dealers). It'll take them quite awhile—maybe even a year—to come in here, inspect, then bid."

Plant closings are nothing new for 55-year-old Mr. Webb. He had a hand in supervising the much-criticized Destrehan refinery shutdown in 1958, and he coordinated the closing of the company's Neodesha, Kansas, refinery in 1970. In fact, he admits, he's occasionally, although jocularly, called "undertaker" or "the hatchet man."

American Oil's performance in El Dorado has won raves from local leaders and employees, despite the fact that the community is losing an employer that pays about \$3 million in annual salaries and wages and contributes, for example, \$162,000 a year to the local school district.

County Judge Jerry says, "We're grateful for their generosity" in donating the property. El Dorado Mayor I. L. Pesses declares, "American Oil has done a commendable and excellent job in the way it announced and is closing the refinery. We have no ill feelings toward them; they've acted in good faith." Union leader Phelps adds, "The company has taken a step forward in plant closings."

EFFECTIVENESS OF YOUTH CONSERVATION CORPS

Mr. DOMINICK. Mr. President, the March issue of American Biology Teacher contains an article by Mr. Dennis Lynch, a district ranger for the Pike National Forest in Colorado, describing his experience with the Youth Conservation Corps program last summer. Mr. Lynch describes the enthusiasm of the 10 girls and 15 boys selected for the program in his area and quotes the participants as believing that it was a most fascinating and rewarding experience.

I believe the article provides some useful, firsthand observations on the effectiveness of the YCC program in its first year of operation. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

YCC . . . AN EXPERIENCE IN THE OUTDOORS
(By Dennis Lynch)

Joan Meyer is a tall, freckle-faced pixie with braids. This fall she waded into her high school chemistry and geology courses with exceptional enthusiasm. Something had hap-

pened to her—and to 24 other young people in Colorado Springs, Colo.—in the weeks just ahead of the return to classes.

"This summer has been the most meaningful and most rewarding experience of my life," said Joan, who is 17. "The Youth Conservation Corps program has left a great impression on me and I was proud to be a part of it. The work was fun, even though tiring. But the best part of the job was the education. I never knew my environment could be so interesting."

THE YOUTH CONSERVATION CORPS

What sort of program gets that kind of response? The Youth Conservation Corps (YCC) program of 1971 was the start of a three-year pilot program authorized by Congress to provide summer employment for youth in the nation's forests and parks. Its sponsors, Sen. Henry Jackson and Rep. Lloyd Meeds, both of Washington state, have described YCC as a program to provide youth with meaningful employment and environmental-education opportunities while enhancing our environment at the same time. "It is a way to harness the creative energies of our young people to change the face and character of the nation," Jackson said.

The first YCC program did just that, 2,200 young people were employed in national forests and national parks. It was such a success that Senator Jackson and many of his colleagues are calling for the employment of 100,000 boys and girls in 1972.

Unlike many current federal programs, YCC isn't necessarily for the poor. The bill specifically states that the corps shall be open to youth of both sexes and of all social, economic, and racial classifications. Also, youth employed in the program must be at least 15 years of age and not older than 19. No person can be employed as a member of the corps for a term in excess of 90 days during any single year.

As a U.S. Forest Service district ranger I became excited about the program as soon as I learned about the bills proposed by Jackson and Meeds. I guess I thought back to my youth in Oregon, when I was 16. That summer I volunteered myself (and my 14-year-old brother!) to the local district ranger, for free, to help him out with trail maintenance and construction. I found out then (as have the kids who more recently, have volunteered themselves to me) that problems of liability, injury, and responsibility prevent the Forest Service from "employing" volunteers. I suppose my disappointment as a teenager caused me, last year, to make a pest out of myself until I was promised a YCC program for my ranger district.

SETTING UP THE PROGRAM

The Pikes Peak District, Pike National Forest, is adjacent to metropolitan Colorado Springs; in fact a portion of the district lies within the city limits. The district is subject to all the pressures and demands of big-city public parks—and we are woefully understaffed and underfinanced. The idea of 25 bright-eyed, eager helpers was exciting. We had worked with youth groups on conservation programs before, but we really began to see youth's potential when we held a "plant-in" on Earth Day, 1970, and had over 120 helpers. The helpers were mostly kids 15 to 18 who came to plant trees and stayed with us until dusk. With this knowledge—that today's kids want to, and can, do constructive work—we pressed ahead for a YCC program.

When at last we got the go-ahead it was for a 25-enrollee program. This was to be a coed program, with the kids living at home and working from 8 a.m., to 5 p.m. five days a week. Over 1,000 invitations went out to senior high students in School District 11, which was our cooperator for this pilot program effort. With the help of the schools' Larry Bussey, special services director, and Chuck Rezor, science adviser, the applications were reviewed by science teachers and

counselors, who screened the applicants to a total of 100.

How do you pick 25 enrollees out of 100 enthusiastic and well-qualified young people? Warren Harper, our program director on the district, and I threw up our hands! An old-fashioned drawing of names out of the hat had to be the answer. The 25 lucky applicants were invited to bring their parents to meet with us for a discussion of the program. 15 boys, 10 girls, and their parents, from all walks of life, assured us that we hadn't been wrong. We told them it was their program, their chance: only they could make it successful.

PROJECTS OF ALL KINDS

On June 21, 1971, the boys and girls started their first day with a desire to make the program successful—a desire that never failed throughout the following eight weeks. That first day we hiked 10 km to build a nature trail for the school children of Manitou Springs and Colorado Springs. The enrollees were tired and thirsty but overwhelmingly enthusiastic that evening as they nursed their aching muscles and blisters.

Other projects followed: constructing trail bridges, revegetating eroded slopes, planting trees and shrubs, building new trails and maintaining existing trails, maintaining campgrounds, setting signs for a guided automobile tour, developing waterfowl nesting and feeding places, developing food and cover plots for birds and small mammals, and the unending task of cleaning up someone else's trash. The final project was a monument to the kids themselves. Working with our landscape architect, one of the girls, Linda Hansch, designed a campground—and the kids proceeded to build it.

The program included an environmental education effort, too. Each crew was led by a forestry student from Colorado State University. The college students were responsible for encouraging each of their five crew members to discover "environmental awareness" for themselves. No one was to be force-fed or lectured to. It was "learn while doing."

A theme for each week drew attention to a specific part of the environment. This was supplemented by field trips to the life zones (Upper Sonoran to Arctic-Alpine) that exist from Colorado Springs (elevation 1,830 m) to the summit of Pikes Peak (4,300 m), which is about 7 km, air-line, from the city. The corps members also visited a fire tower, recreation places, and timber-management sites. They were given a brief introduction to each trip; then, in the field, they made the measurements of air and soil temperatures and of tree heights, diameters, and ages, and they learned to name the plants and estimate their abundance. They were encouraged to reach their own conclusions about proper management techniques, and they tried these out on the professionals who accompanied them on the trip.

WEEKS OF SELF-DISCOVERY

Parents commented on the decided changes of character that occurred in their sons and daughters. Calmness, confidence, and enthusiasm replaced restlessness, hopelessness, and cynicism. The effect of the program is best summarized in the words of a very thoughtful enrollee. Mitch Corwine, who had shoulder-length hair and real questions about the "establishment" at the beginning, said at the end of the program: "This has been the most fascinating and rewarding summer in my life. I want to thank the people who created and supported the Youth Conservation Corps for giving me the opportunity to prove to a great number of people that I am as good as anybody else." (P.S.: Mitch kept his long hair.)

For me, it was the best program and summer I've ever spent in my 12 years in the U.S. Forest Service. You science teachers are lucky: you get to work with the kids for nine months; I have them for less than three!

DAMAGE FROM STRIP COAL MINING

Mr. HARRIS. Mr. President, more and more attention is being focused, and rightly so, on the human and environmental damage being caused all over this country by the strip mining of coal.

From my own examination of this problem, I have come to believe that the Tennessee Valley Authority is in part to blame for the widening use of strip-mining, especially in the Appalachian area.

TVA has become one of the largest consumers of stripped coal in the Nation. In the process, it has also become an accomplice in the senseless destruction of hills and streams in parts of Tennessee and Kentucky, West Virginia, and Ohio.

Mr. President, the March issue of Esquire magazine contains an exceptional article on the tragic consequences of strip mining for coal. It demonstrates convincingly why TVA must abandon its current policy as one of the strip coal industry's best customer.

Because of the widespread human suffering it uncovers in coal-stripping areas, this excellent article also illustrates why the Heckler-Nelson bill, calling for the complete abolition of coal stripping, is so urgently needed.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POWER CORRUPTS

(By Osborn Segerberg, Jr.)

BUT THE QUESTION BEFORE THE T.V.A. IS, MUST CHEAP ELECTRIC POWER CORRUPT ABSOLUTELY?

In September, 1935, two years after President Franklin D. Roosevelt signed the bill creating the Tennessee Valley Authority, Senator George Norris went for a boat ride on Norris Lake behind the dam also named for himself. As T.V.A. Chairman David Lilienthal wrote in his *Journals*, Norris "looked at the dam and as the sun's rays were cutting across it toward sunset, he said, 'Gosh, it does take a long time and a lot of work to get ready.' This is an interesting clue to his point of view because all of this work is preliminary to the production of power and electricity which is the thing that he thinks of when he thinks about the T.V.A. The other things to him are interesting sidelines. . . ."

Five years later, however, F.D.R. complained: "The damned newspapers have made it out that T.V.A. is simply a power agency. Now that isn't the fact. We aren't just providing navigation and flood control and power. We are reclaiming land and human beings." And they were reclaimed. Today, behind the system's forty or so power-producing dams, lakes attract water skiers, fishermen, campers, recreation developers. Stimulated commerce and diversified industry radiate prosperity so that the standard of living in the region has climbed at a rate fifty percent above the national average. Nevertheless, in the long run, Senator Norris' view of the real priorities of T.V.A. prevailed over F.D.R.'s. As of June 30, 1970, T.V.A.'s net investment in power assets amounted to \$2,850,000,000; its net investment in non-power assets slightly more than \$600,000,000. Its 1970 power expenses were \$405,000,000 with power revenues totaling \$480,000,000 for a net income of \$75,000,000. Net expenses for non-power programs in fiscal 1970 were \$36,000,000.

T.V.A. is a powerhouse of statistics. But the ones it seems to favor most today em-

phasize the magnitude of its power production. In 1970, for the first time the system supplied more than 100,000,000 kilowatt-hours of electricity. T.V.A. has about 20,000,000 kw. of installed capacity—more than double the capacity of Con Edison, which supplies New York City—with another 10,000,000 kw. scheduled to go on the line by 1975. Average residential use of electricity in the region has grown from 600 kw.h. in 1933, when the average rate was 5.7 cents per kw.h., to 14,650 kw.h. in 1970—more than double the average consumption for the nation. The average residential customer in the T.V.A. area pays about one cent per kw.h., one half the national average. This cheap, generously used electricity is the key to the revival of the Tennessee Valley.

What generally goes unrecognized is that more than eight percent of T.V.A.'s power now comes not from dams but from its eleven steam plants, with the proportion of hydroelectric power dwindling all the time. T.V.A. started out as a harnesser of rivers. By the end of the World War II, most of the suitable hydropower sites had been utilized, while the demand for electricity kept soaring. In order to keep growing in the post-war period, T.V.A. was forced to turn to steam plants, and to reach outside its watershed for the coal to run them. The resort to coal profoundly altered the character of T.V.A., for while water power is free once the dams are built, coal is bought in the market.

In 1961, T.V.A. became embroiled in a nasty spat of publicity involving a complicated antitrust suit brought by east Tennessee and east Kentucky coal operators charging a conspiracy to advance the fortunes of big mechanized mines in western Kentucky. In one of a Pulitzer Prize-winning series of articles in *The Nashville Tennessean*, a state representative charged that in order to sell to T.V.A. the small coal operators "literally have cut wages to the point that kids go hungry." Another *Tennessean* article said T.V.A. used mechanized coal because it is produced more cheaply. "And T.V.A. notes it is bound by federal law to choose the lowest bidder on all coal contracts."

The simmering quarrel between T.V.A. and the coal industry boiled over in 1970 with shrinking fuel supplies and T.V.A.'s announcement of a new rate increase. T.V.A. blamed the rate hike in large part on skyrocketing coal prices. Chairman Aubrey Wagner, who in 1962 succeeded to the job first held by Lillenthal, accused the industry of "a gross lack of planning . . . to take care of essential public needs." T.V.A. customers, incensed at the rate increase, sallied into Washington to get to the truth of the matter. A National Coal Association official told them bluntly: "The days of cheap energy are gone."

In a more restrained tone, N.C.A. executive vice president James Garvey told the Senate Interior Committee in September, 1970, "T.V.A.'s past ability to use its monopoly purchasing power got T.V.A. into the habit of taking advantage of the coal industry's distressed condition caused by its overproductive capacity. As a result, T.V.A. finds it shocking and unacceptable to pay a fair price for coal." Garvey observed, "In the eastern section, T.V.A. has (following its system of accepting the lowest bid) taken advantage of the willingness of non-career coal companies to 'cream the contours.' T.V.A. in its eastern section has lived off the very inexpensive coal which could be, and was, obtained from strip mining the contours of the hills."

It made good economic sense for T.V.A. to use strip-mined coal. A road-construction boss could take off one week, go into the hills with a bulldozer, power shovel, and a few men, and be a coal operator the next week. It takes fewer men to strip; ton for ton, a

man employed in strip mining produces up to five times as much coal and at about one third the cost as the same man working in a deep mine. And the men prefer stripping: a strip miner need not risk his life or his health underground. Moreover, the entire seam of coal can be removed; this is never possible in deep mining. This means cheap coal. In 1961, when the price for Kentucky coal was four dollars a ton, T.V.A. was purchasing supplies on at least one contract for half that rate. T.V.A. estimates that the cost of coal amounts to two thirds of the cost of power production. Cheap coal means cheap electricity.

Where T.V.A. pioneered, the notably cautious electric utility industry watched, waited, then followed. With the surging demand for cheap coal in the early 1960's, strip mining went big time. "A monster 115-cubic-yard shovel big enough to dwarf a ten-story building," proclaims a picture caption in a pamphlet on T.V.A.'s Paradise steam plant in Drakesboro, Kentucky, currently the biggest in the world. "It is the largest self-propelled land vehicle in history, and can scoop up, swing and dump a third of a million pounds of earth at a time." T.V.A. issued the brochure in the early Sixties; today's technology has provided shovels half again as large, able to take two-hundred-cubic-yard bites. But the Paradise plant, with a rated generator capacity of 2,500,000 kilowatts, is still the biggest.

The Paradise plant has no geographical relationship whatever to the Tennessee Valley. Its location in west central Kentucky is explained by the fact that it is our first "mine mouth" plant. "This plant burns 21,000 tons of coal a day," a guard proudly told me. "It's sitting right on a bed of coal."

The land surrounding the Paradise plant must be one of the most devastated areas in the United States. Approaching the plant is like entering a combat zone. Kentucky's Senator John Sherman Cooper described it this way in questioning Chairman Wagner at a committee hearing in Washington in August, 1970:

"I don't know that I can say that it is your fault, but one of the purposes, as I understand it, of the T.V.A. is that it deals with conservation and tries to make a better environment. Yet in Muhlenburg County and Ohio County, where Peabody Coal strip-mines—I think it is the second-largest coal company in the United States—these counties look like what we once thought the surface of the moon would look like—terrible."

I asked Chairman Wagner and Information Director Paul Evans how T.V.A. could be associated with the kind of environment that surrounds the Paradise plant. They explained that not all the coal stripped from the area goes to that particular plant (Peabody is mining 65,000,000 tons over a seventeen-year period), that the land mined for T.V.A. is being reclaimed and that the area was nothing but scrub brush or strip mines before the plant was built, anyway.

Although neither man said it, the T.V.A.'s mandate was to rehabilitate the Tennessee Valley, not to worry about Kentucky. A comparable Kentucky Valley Authority undoubtedly would have utilized its prime resource, coal. Without cheap Kentucky coal many of T.V.A.'s proudest accomplishments never would have come to pass. Two thirds of T.V.A.'s coal comes from Kentucky—more than 18,800,000 tons from the west, 3,600,000 tons from the east, in all more than twenty percent of the coal strip-mined in the state.

The strip mining that is conducted in the flat, rolling country of western Kentucky, where the Paradise plant is situated, is known as area mining. Here, as in Ohio or Illinois, the tier of coal may lie within thirty to sixty feet of the surface. A supershovel digs a great trench. The topsoil and other material, called the overburden, are piled along-

side the trench. Then smaller shovels scoop out the coal. When the accessible coal has been removed, a parallel cut is gouged, with the overburden deposited into the first trench. And so on, so that the land is transformed into a washboard of ridges and valleys like a gargantuan plowed field.

In mountainous country, contour mining is practiced. This corresponds to the L-shaped cut made for a highway along a hillside. First, bulldozers clear trees, brush and vegetation. Dynamite blasting loosens the earth, then shovels and dozers remove the overburden, forming what is called a bench, what would be the roadway if a road were there, joined at right angles to what is called a highwall. Since there is no place to put the overburden, the custom has been to dump the broken trees, stumps, boulders and earth material over the side of the hill. The exposed layer of coal is lifted out by shovels, loaded onto trucks and carted away. The deeper the miners cut into a hillside, the taller the highwall becomes. A limit usually is reached when the highwall attains about thirty to fifty feet.

At this point, auger mining may commence. Drills up to seven feet in diameter bite as deep as seventy yards into the mountain, the spiral blades peeling out the coal. Stripping is the fastest growing method for mineral extraction, particularly for coal. It accounted for only five percent of coal mining in 1931; in the early 1950's, when T.V.A. came into the market, the figure was twenty-two percent; now strip and auger mining are up to forty-four percent.

Until the 1940's strip mining was unknown to the mountain people whose grandfathers had signed so-called "broad form" deeds with the coal companies. For ridiculously low prices—around fifty cents an acre—the natives gave the companies title to all coal, oil, gas and minerals underground, and authorized them to build roads and other structures wherever they wanted to, as well as to cut whatever timber they needed. The mountaineers watched the rape of their land with occasional resorts to violence and sorties to law—the latter futile, since even the rare legal victories against coal operators were doomed to eventual defeat if the case rose to the state's highest court. Where other states held that landowners could not have intended to sell the right to mine their land by a process unknown at the time the deeds were drawn, Kentucky's seven-judge Court of Appeals ratified the broad form in 1956. Another test case was brought in 1968. Not only was the landowner denied damages inflicted by mining, but the rights of the coal operator were extended by the ruling of a four-justice majority, which held: "It appears to us that if, as we in substance are holding, the mineral owner bought and paid for the right to destroy [emphasis added] the surface in a good faith exercise of the right to remove the minerals, then there is no basis upon which there could rest an obligation to pay damages for exercising that right." In 1970, Knott County, one of the counties most desperately affected, imposed a ban on strip mining as a public nuisance, but the state's attorney general ruled that the procedure was inconsistent with legal precedent.

If the law offers no redress to the mountaineers, neither does T.V.A. In the Summer of 1970 Leslie Dunbar of the Field Foundation and Eli Evans of the Carnegie Corporation talked to Mrs. Vernon Barnett who lives with her husband below Yellow Creek Mine near Anson, Kentucky. The three men wrote about their encounter in a letter to Frank Smith, a T.V.A. director.

"We asked her what it was like living below the mine, and she told me how they had to flee their house each time it rained for fear that tons of earth above might turn into a mud slide."

"My husband is a disabled miner and that house is all our life savings," she said. "It's a good house and what we always wanted because we never had a toilet or running water until we moved here." And then she said in a terrified voice, "Someday that whole mountain is going to wash down through this gully and bury my house."

Mrs. Barnett told the Foundation men that she had talked to mine-owner William Sturgill, but he had done nothing. The letter goes on:

"Our quiet inquiries indicated that T.V.A. could be a major purchaser of the coal from Mr. Sturgill's mine and it seemed to us that you might be able to help Mr. and Mrs. Vernon Barnett and others like them. After all, the economics of strip mining indicate that an agency of the government of the United States may have placed this fine couple in fear of their lives to face night after night of uncertainty and outright terror. There are other people like her in Kentucky and we know it is easy to say that solving one person's problems can raise a lot of issues regarding responsibility for others, but T.V.A. could be so much to blame in this situation that we felt compelled to urge you to give it your personal attention."

Director Smith wrote back that Sturgill's Kentucky Oak Mining Company (now known as Falcon Coal Company) was indeed under contract to T.V.A. and that the company was in compliance with its reclamation obligations. Therefore the threat of a landslide was out of the question. However, Smith said, he was sending a man to check on it. "Let me point out again," Smith wrote, "that the coal is not being mined because of T.V.A. but because of the consumption of electric power throughout the country."

As it turned out, the T.V.A. inspector said that the slide situation was unpredictable. In other words, it could happen. The T.V.A. offered to replace the Barnetts' house at a safer location across the road or to move them to a new house, but several months after the inspector's report, the T.V.A. was still surveying land and the couple was still living jeopardy.

Dan Gibson is a living legend in eastern Kentucky because he beat the system and won a small victory. Dan Gibson is eighty-six years old, still full frame, still erect, still a man to be reckoned with. He cut down on his lifetime smoking habit a few months ago because he felt it was beginning to affect his mind.

Dan and his wife live in a typical small mountain cove that cups the head of Cockerel's Trace Fork of Clear Creek in Knott County near Hindman. Mrs. Gibson's son by an earlier marriage lives close by with his family. Mrs. Gibson's father had signed away the mineral rights in this hollow. "My father thought he sold just one seam of coal," Mrs. Gibson said. "Later they claimed the rocks and clay. Nobody ever thought about a bulldozer and shovel."

The bulldozers and shovels began arriving in their area in 1964. A crew would move in quietly and before anyone was aware of it a strip operation would be in full bloom. One neighbor surprised a coal operator, who had already ruined his farm and, with a rifle trained on him, got the operator to write out a check for \$4,000 on the spot. But few residents got money or satisfaction, since the operators were within their legal rights. When blasting dislodged the chimney stones of another neighbor's house, the house caught fire and burned down. Another dynamite explosion broke a gas line and, when a housewife lit a match, the resulting fire burned that house down. A third house was buried by tumbling overburden, a mother and her children escaping just in time. Smoke choked everyone, dust settled everywhere.

Then the strippers began probing Dan Gibson's cove. Once in the black of night he

noticed lights on the ridge opposite his house. One shot and the lights were turned out. Another time, the strippers chewed the back of a hill and Gibson did not discover that operation until they had cut through the ridge. "Mine water as black as my pants came rolling down into our creek. People came here to fish. There used to be big chubs, but that cleared ever' thing out of the hollow."

The showdown came in the Summer of 1965. The land belonged, or eventually would, to two stepsons and three grandsons who were in service, one fighting in Vietnam. Mr. Gibson didn't think it right for their property to be scalped while they were away like that. So he got his .22-caliber gun and went up to the ridge to confront the marauders.

He spotted the invaders when he had approached to about 150 yards; a deputy sheriff was standing in front of bulldozers. Gibson slipped behind the deputy. "I said, 'What are you doin' up here?' He said, 'I'm up here guardin' these men to work.' And I said, 'Mister, I don't want any trouble with you all. I ask you to walk in front of me and go out there and tell them fellers to get off. Go back across that line.' Well, he did. And they went back."

Gibson, whose right hand is crippled, got help from one of the mine crew to set up a hand-lettered sign on his property line. It read: "No Trespassing." This first confrontation occurred about ten in the morning. For the next four or five hours, Dan Gibson sat on his side of the boundary and about twenty of the strip-mining crew sat on the other side. In midafternoon, six state troopers appeared and crossed the border. Gibson asked the leader, whom he identifies as a Sergeant Mitchell, if he had come to run him off his own property. The police officer said he had a right to be there. In reply, Dan Gibson said he was eighty years old and never had trouble with anyone in his life.

Of Kentucky's four major rivers that rise in the eastern hills, Dr. Barbour said that only the Licking "is not in too bad shape except for tributaries in coal areas. Some of the most miserable streams are just gutters, boulders bloody red and glued in place with nothing alive that I could find."

Federal regulation of strip mining has been suggested by U.M.W. President W. A. Boyle, among others, and President Nixon has proposed federal guidelines with a provision for federal take-over if the state fails to enforce the guidelines. These positions are in contrast to the sentiments of T.V.A., which for many years preferred state regulation.

When the New York Times editorially proposed a ban on strip mining, T.V.A. Chairman Wagner quickly wrote to the editor opposing such action. He said that barren, treeless wastelands are not to be condoned, of course, but they don't have to exist. "T.V.A. in cooperation with some of its suppliers of coal, has demonstrated that coal can be removed by surface mining and the area involved restored to a condition as good or better than before the mining took place. The productivity of the land can be restored or improved and pollution controlled."

This claim recalls the contention of the lawyer who, in trying to block a claim against his client, argued that the arm of the young complainant actually was stronger since the time he had broken it. The counselor waxed eloquent on the powers of nature to repair and reinforce the site of the fracture until the opposing attorney inquired if his adversary recommended that everyone break his arm in order to improve it. Senior ecologist Dr. George Woodwell of Brookhaven National Laboratory calls T.V.A. brochures of its model reclamation "extremely superficial and misleading" and he estimates that the organic productivity "has been reduced to a fifth to one-tenth its potential prior to disturbance."

The closest thing to federal regulation so

far has been the passage of the National Environmental Policy Act, whereby Congress has declared a national policy "to promote efforts which will prevent or eliminate damage to the environment and biosphere." The act says that unless some other national goal supersedes, it is the responsibility of the Federal Government to "attain the widest range of beneficial uses of the environment without degradation . . . maintain, wherever possible, an environment which supports diversity . . . enhance the quality of renewable resources." The law directs a federal agency to file a statement if any action it plans may have an adverse effect on environment, and consider alternatives.

Natural Resources Defense Council, the Environmental Defense Fund, and the Sierra Club, joined by National Audubon Society, have begun legal action to make T.V.A. file such statements with a view toward ending its procurement of coal from strip mining. While T.V.A. does not mine the coal directly, the environmental groups contend the agency is violating N.E.P.A. T.V.A. issued a hundred-page policy statement in December and said it would issue such environmental documents annually, but would not give environmental impact statements for each of the thirty to forty strip-mine contracts negotiated each year. John Adams, executive director of the Natural Resources, believes that by prodding T.V.A. to file an impact statement, "they'll realize what they are doing and stop it—we're forcing them to think." It is a good time for thinking. . . .

It is high time for thinking—thinking about the paradoxes involved in T.V.A.'s two-headed mandate as an environmental agency and as a purveyor of cheap electricity. Reconciling the two is going to be extremely difficult. For example, T.V.A. pioneered the use of electricity for home heating, and is quick to point out that this is a clean way to heat a home. One big power plant undoubtedly concentrates the pollution, and thereby makes it more amenable to control than a lot of little home furnaces. But the price of the gain in air quality is accelerated depletion of coal, for when the fuel is burned at a plant to generate electricity, sixty percent of the coal's heat is wasted. So the cost in energy rather than in dollars to heat an average home electrically is seven and a half tons of coal a year. The energy cost of a color television set is 375 pounds of coal a year, for an electric range nearly half a ton, and almost two tons for air conditioning. The demand for energy can only increase. Cheap thermonuclear power may lie on the distant horizon, but on the other hand it may not—the technological problems of controlling the reaction are enormous, there still is likely to be a highly poisonous by-product, the problems of dispersing the waste heat are immense. For decades the American demand for electric power has been doubling every ten years, and for the past couple of years the rate has been increasing even faster than that. In the long run this geometric increase in energy demand simply cannot continue, because whatever the energy resource limits of the earth may be, there are limits somewhere. But of course in the long run we are all dead. In the short run, we have a coal problem.

Some critics believe that bulk users of electric power should be made to pay the same rates as small residential users. These critics believe that providing preferentially cheap electricity acts as a spur to its extravagant use and a constant stimulant to the demand-supply spiral. T.V.A. opposes any such rate change, believing that the economic realities are such that the bulk user deserves cheaper rates. Wagner philosophically opposes any curtailment of the power that builds the products that provide the jobs that bring the money that gives us the standard of living we have. Start to cut back and the process could go into reverse: fewer products . . .

fewer jobs . . . unemployment . . . depression. The whole house of cards collapses.

Former T.V.A. and A. E. C. chairman Lillenthal says, "Cheap power has done its job. I think that changing the rate structure is the quickest and most natural way to bring about a de-escalation in the use of power. The bulk user should be made to pay for the increased costs as well as the housewife."

Even so, Mr. Lillenthal is under no illusions that this will materially affect the use of coal. "The coal is a resource," he said. "It will be used."

IS THE GENOCIDE CONVENTION RETROACTIVE?

Mr. PROXMIRE. Mr. President, one of the more sensitive questions concerning American ratification of the Genocide Convention stems from our own liability under the treaty. There appears to be some uncertainty as to whether the terms of the treaty are retroactive and whether the American people can be held accountable for alleged genocide involving American Indians.

While no citizen of the United States can take pride in our treatment of the Indian during this country's early settlement, there is no reason to fear charges of genocide. The terms of the treaty are not retroactive. Rather, the very essence of the treaty is the prevention and punishment of future acts of genocide committed throughout the world. What we did to the American Indian we will have to bear as part of a national conscience, but the Genocide Convention is not designed to resurrect dead issues. It is a constructive and positive international declaration which states with determination the world's abhorrence of violence and genocide.

Now is the time for America to take its place of moral leadership and swiftly ratify the long-neglected Genocide Convention.

ORGANIZATIONAL QUESTIONS BEFORE THE STOCKHOLM CONFERENCE

Mr. MUSKIE. Mr. President, recently Prof. Richard N. Gardner presented an excellent paper on the organizational questions facing the United States at the 1972 United Nations Conference on the Human Environment to the Secretary of State's Advisory Committee on that Conference.

Professor Gardner is a Henry L. Moses professor of law and international organization at Columbia University. His expertise in the field of international organization is well known.

These comments should prove of great value in developing a clear insight into global environmental problems and the possible institutional means by which these problems can be solved. I ask unanimous consent that Mr. Gardner's remarks be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF RICHARD N. GARDNER TO THE SECRETARY OF STATE'S ADVISORY COMMITTEE ON THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT AT THE U.S. MISSION TO THE UNITED NATIONS, FRIDAY, MARCH 3, 1972

Richard N. Gardner, Professor of Law and International Organization at Columbia

University, served as Deputy Assistant Secretary of State for International Organization Affairs from 1961 to 1965. He is currently serving as consultant to the Secretary-General of the United Nations Conference on the Human Environment on international organizational questions. He also serves as U.N. representative of the International Union for Conservation of Nature and Natural Resources (IUCN). This statement, however, is made in his personal capacity.

I am grateful for this opportunity to present my views to this distinguished Committee on the organizational questions that will face us at the Stockholm Conference. My views on these questions are set forth in detail in the attached statement entitled "The Role of the UN in Environmental Problems." In these brief introductory remarks, I would like to emphasize three points that I believe have not yet received sufficient attention in either official or public discussion of international environmental organization.

First: The desire of the United States for effective international arrangements for environmental regulation is unlikely to be realized without major changes in present U.S. policy toward the United Nations and multilateral development assistance.

I believe, and have argued for more than a decade, that the national security of the United States is gravely threatened by the expensive and dangerous arms race, the uncontrolled growth of world population, the progressive deterioration of the human environment and the spreading frustration of people in the developing countries at their inability to achieve a decent life. A study by the Club of Rome published only this week suggests the very real likelihood of massive breakdowns in world society within the lives of our children or grandchildren if present trends continue. Although the most devastating consequences of these trends may lie some decades in the future, the measures necessary to avert disaster must be taken now.

If this diagnosis is correct, the United States ought to be doing everything within its power to strengthen the United Nations and other international institutions to deal with these global problems. Unhappily, however, the Vietnam tragedy is impelling us not only to reduce our unilateral responsibilities, which is good, but to disengage from our multilateral responsibilities, which is bad. United States support for multilateral institutions is in doubt or disarray all along the line. We take no serious initiatives to enlarge the U.N. role in peacekeeping or development. We take a penny-wise and pound-foolish attitude to the United Nations budget. We adopt a low financial profile as the United Nations drifts toward bankruptcy. We violate solemn treaty obligations by refusing to pay our assessments to the ILO and by breaching the Security Council's embargo on trade with Rhodesia. We move steadily away from the internationally agreed aid target of one percent of GNP as other industrialized nations move toward it. We fail to put up our promised share of funds for the multilateral aid agencies—the International Development Association, the Inter-American Development Bank and the Asian Development Bank.

We complain that the U.N. behaves "irresponsibly." How can we expect the institution to behave responsibly if we do not behave responsibly toward it? At a time of planetary emergency, we are rapidly becoming a global dropout. Our leadership is currently fascinated by the politics of the balance of power. Surely the time has come to devote more attention to the politics of world order.

What does all this have to do with the Stockholm Conference? Everything. A healthy set of environmental institutions is unlikely to flourish in a weak United Nations.

Moreover, an effective multilateral attack

on the problems of environment and population growth is not likely to be mounted in the absence of an effective multilateral attack on poverty. Without an increase in the quantity and quality of global aid efforts, the financial and political basis for population control and environmental protection in the less developed countries will not exist. Not only does action on the population and environmental problems cost money that the developing countries do not have, but political resistance to population and environment efforts is likely to grow in these countries if international assistance is static or declining. Already, at the U.N., some countries are charging that the new emphasis by the United States on the environment and population is a gigantic "cop out" to justify our declining foreign aid effort.

Second: The most important single objective of the Stockholm Conference is to establish a flexible institutional framework capable of future growth in response to the needs and demands of the world community.

I do not wish to minimize the importance of the other matters that will be before the Stockholm Conference, such as the Declaration on the Human Environment, the Action Plan, the Convention on Ocean Dumping and the World Heritage Foundation. But the overriding necessity of the Stockholm Conference is to establish an institutional framework to carry on the work which we have only begun. If this is missing, no other achievements can prevent Stockholm from being deemed a failure.

In the attached paper, I describe in some detail my own views about the institutional arrangements that are required—an Environment Secretariat of the highest quality with adequate power of initiative; an inter-governmental body to which governments will send senior environmental decision-makers; effective arrangements to draw upon the expertise of the private scientific community; a substantial environment fund to assure the financing of priority projects; new measures for the prevention and settlement of environment disputes; and the development of more effective arrangements to deal with the marine environment.

The basic point that I wish to stress in these preliminary remarks is that our principal attention in the development of these institutions should be on substance rather than form. To take an example, the question of whether the inter-governmental body is an organ of the General Assembly or of ECOSOC is less important than the question of whether governments are prepared to send as representatives to it their environmental ministers or senior environmental decision-makers.

A related point is that we should not be too disappointed if the institutional arrangements do not spell out all the formal powers which some of us in the United States might like to include. Experience with international institutions inside and outside the United Nations suggests that a general and somewhat vague grant of authority can provide the basis for impressive organic growth over the years in response to the needs and aspirations of the member states. The important thing is to get something going that has the capacity for growth.

Third: The United States should support the establishment within the United Nations of an "international environmental coalition" of those countries that are prepared to undertake special responsibilities for environmental action.

I strongly believe that our major efforts for environmental action should be taken through the United Nations and its family of agencies. No other institutions presently exist in which we can pursue environmental diplomacy with developing countries and Communist nations as well as with the members of the North Atlantic community and Japan. While regional cooperation is also

necessary, global action through the U.N. system is indispensable if we are to secure the cooperation of the developing world and take vital decisions to protect the world's oceans and atmosphere.

At the same time, we have to face the fact that action within the U.N. does present special difficulties. There are now more than 130 members of the United Nations and these members have widely varying attitudes as to the seriousness of environmental problems and as to the extent to which they should limit their national freedom of action to deal with them. We need some formula to reconcile the need for global cooperation within the United Nations with the equally compelling need for cooperation that is adequate to the challenge.

I believe that such a formula can be found in an "international environmental coalition" operating within the United Nations. The concept is simple. At the Stockholm Conference and in subsequent meetings, an attempt should be made to reach the highest level of agreement among all U.N. members on institutional and other issues. In the foreseeable future, however, this level of agreement will undoubtedly be disappointing to those of us who feel a sense of urgency about the environmental threat. Therefore, the United States should join in organizing a coalition of environmentally concerned nations who would accept voluntarily a higher level of obligation than the membership as a whole.

One obvious example of this higher level of obligation would be willingness to contribute generously to an environment fund. Less obvious, but no less important, would be the voluntary acceptance by the members of the coalition of certain procedures for periodic reporting and submission of environmental disputes to third party settlement.

To be somewhat more specific, the United States and other members of such a coalition should agree to report to the new Environment Secretariat on all national activities (private as well as public) that might affect the environment of others and to consult in good faith with other members and with international agencies when questions or objections are raised. The members of the coalition should also agree that environmental disputes to which they are a party can be taken to the new intergovernmental body at the request of any other party and that they will cooperate with any specially-constituted scientific fact finding panel which might wish to make on the spot investigations on their territories. The members of the coalition should also agree to make use of the good offices of the Environment Secretariat and to permit non-governmental groups like IUCN and ICSU to present independent testimony on matters at issue in environmental disputes. In addition, wherever possible, international agreements on such specific matters as oil pollution of the sea or ocean dumping should provide for the settlement of disputes at the request of any party by an arbitral commission or the International Court of Justice, which could organize itself into special chambers for this purpose and make use of scientific "assessors."

I doubt that the members of the "international environmental coalition" would be ready to accept an "environmental veto" by international agencies, much less an environmental "police force." But an international review process of the kind outlined above, even if it did not lead to legally binding decisions by international agencies, would represent a great step forward. I believe it would serve the enlightened self-interest of our country to promote such a process among as many countries as possible and to discharge to the full the obligations involved.

Whatever institutions are created at Stockholm, their vitality will obviously depend on the behavior of governments. The hard

question is whether those leaders who now use the rhetoric of "spaceship earth" are really prepared to accept the political and economic costs that this rhetoric implies. The answer will be found in the resources that they are prepared to devote to international environmental efforts and the limitations they are prepared to accept on their traditional freedom of national action.

The institutional decisions which governments take at Stockholm and after will have the most profound consequences not only on the quality of environmental cooperation but also more broadly on the whole system of international relations. Failure to devise a workable pattern of cooperation to cope with urgent environmental issues could lead to international disputes and a poisoning of political relations. On the other hand, success in environmental cooperation could help humanity deal with other pressing problems.

A record of successful achievement in this area would demonstrate the U.N.'s capacity to adjust its institutional habits and deal efficiently with major threats to the survival of mankind. It could show the way to new approaches in the economic and political areas. Perhaps, in the long run, it could stimulate new perceptions of interdependence and strengthen the political commitment of governments to a stronger United Nations.

PLACEMENT OF STUDENTS ON COLLEGE BOARDS OF TRUSTEES

Mr. HARRIS. Mr. President, on February 29, the Senate gave an overwhelming 66-vote endorsement to an amendment which I was privileged to offer, urging colleges and universities to place students on their boards of trustees and boards of regents.

Since I first made public my intention to offer this measure, and since its adoption by this distinguished body, I have received numerous communications from students, faculty members, and administrators across the country concerning the question of student involvement on university governing boards.

After reading through these letters and telegrams, I am even more strongly convinced that student participation in the governance of schools can be of great value—not only to the students, but also to those more directly charged with the difficult task of administering an institution of higher education.

The responses were, almost without exception, highly favorable to increased student involvement. But the most enthusiastic were those from schools where students had been given this additional responsibility. College presidents and student representatives alike found that the perspective added by a student member of the governing board was a change which, in the words of one letter, "their elder colleagues respect, enjoy, and depend upon."

Mr. President, I ask unanimous consent that a number of these letters and telegrams be printed in the RECORD at the conclusion of these remarks.

Mr. President, we have sent 12 distinguished Senators to confer with Representatives from the House side on the final wording of the Higher Education Act. I am hopeful that the conference committee will retain the wording of the Senate version which gives a mandate for schools throughout America to more

fully involve students in their governance.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

THE CITY UNIVERSITY OF NEW YORK, OFFICE OF THE CHANCELLOR,

New York, N.Y., March 6, 1972.

Hon. FRED R. HARRIS,
U.S. Senate, Committee on Government Operations, Washington, D.C.

DEAR SENATOR HARRIS: You have asked for my views on how younger trustees have affected policy-making at City University.

After two under-thirty board members had been appointed (in August 1969), the local reaction was simply, "Why hasn't this been done before?" It seemed natural and appropriate that recent college graduates bear responsibility as members of a governing board for academic welfare of those coming after them. The "young" trustees have proved to be forceful allies of their elder colleagues in the university effort. As vigorous spokesmen of student concern, alert to current issues of the day and the university's role in these broader issues, the young board member keeps a board on its toes—the only stance for a governing body today.

At the time Miss Maria Joseph Canino, then 25, and Mr. Jean-Louis d'Heilly, then 28, were appointed by Mayor Lindsay, the average age of Board of Higher Education members was 60. The new members were welcomed wholeheartedly, not only for themselves (both are personable and extremely competent), but also for the liaison board members felt them to be with college students. Like other trustees of the period, the Board of Higher Education had been through the travail of campus unrest; they had found the advice of the newly-formed University Student Senate, which Mr. d'Heilly had chaired, extremely helpful and responsible; and they sensed the need for fresh approaches to academic questions.

One of the first steps taken by the new trustees was to visit the campuses to talk with students and establish the board's and their own particular interest in student input. We have no doubt that a growing student surveillance of board action and an accelerating contribution to board deliberations through public hearings is in part a ratification of this round of visits.

Another factor bringing board policy-making closer to students has been the presence of the University Student Senate chairman at board meetings. Although he has no vote, this official is persuasive. Both Miss Canino and Mr. d'Heilly have supported the maturing of this university-wide body.

Currently chairman of the Committee on Campus Governance and a member of the Committee on Student Services, Mr. d'Heilly has persistently moved to update college and university governing procedures to include both advisory and voting responsibility by students and younger (often untenured) members of faculty and staff. As Senate chairman, he initiated a study of governance procedures, following this up with the board's Committee on Law then and later, after he had become a board member. At one time the campuses were uniformly governed by Faculty Councils under board bylaws. Today each campus is required to develop its own governing plan within guidelines established by the board. These new plans provide for student—and often alumni—participation.

Mr. d'Heilly has been particularly concerned with the implementation, evaluation, and readjustment of open admissions procedures to serve student needs.

As a member of the Committee on Expanded Educational Opportunity, Miss Canino has contributed to the refinement and growth of academic programs for disadvantaged students, one of the most important

aspects of City University's responsibility. SEEK, College Discovery, and Open Admissions policies are the business of this committee. Similarly, she has been an advocate of increasing efforts to provide for minorities.

Her personal affiliation with Puerto Rican groups like ASPIRA has been enormously helpful to the university in its effort to encourage Puerto Rican students to take advantage of educational opportunities available to them.

She has been a strong proponent of the development of Puerto Rican studies on our campuses and has thus contributed to the overall expansion and deepening of ethnic studies at City University.

Miss Canino is now a member of the board's Committee on Community Colleges and, in that capacity, has provided new insights as to the aspirations and needs of youth today.

To sum it up, young board members bring enthusiastic, knowledgeable, and practical perspectives to a university governing board, which their elder colleagues respect, enjoy, and depend upon. May I congratulate you on your efforts to expand the involvement of young people in making the decisions which affect them. It is the conviction of CUNY's administration and governing board that the effective way to develop the responsibility of youth is to give youth responsibility.

Sincerely yours,

ROBERT J. KIBBEE,
Chancellor.

NICHOLLS STATE UNIVERSITY,
Thibodaux, La., February 18, 1972.

Re Senate Bill 659, Harris Amendment 398.
Senator FRED R. HARRIS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HARRIS: The Nicholls State University Administrative Council, which is the policy-making council of the University, includes among its membership the President of the Student Government Association.

By virtue of his election to office by the students, the Student Government Association President is automatically a member of the Administrative Council with full voting privilege and rights.

Full Administrative Council membership for the SGA President is a direct means of communication between students and administration, and it is a direct way by which problems of the students can be brought before the Council. Last week, for example, the Administrative Council was in session six hours for the purpose of considering a Code of Student Rights, Freedoms, and Responsibilities proposed by the students and presented to the Council through the SGA President and a group of his associates who attended the Council meeting as guests.

We personally feel that student membership on the Council has provided better communication between students and administration and much good has come from it. Many campus problems were solved because they were brought to the attention of the Council by the SGA President.

Sincerely,

VERNON F. GALLIANO,
President.

KERRY L. COOLEY,
SGA President.

WASHINGTON, D.C.,
February 23, 1972.

HON. FRED R. HARRIS,
Old Senate Office Building,
Washington, D.C.

The youth in this nation are asking for the right to have a voice in what affects them, and that their voice be heard. For too many years now, countless student leaders throughout the nation have spent hours working within the system; proving to the Administration that they are responsible

Consequently, at most colleges today, students are seen on just about every lower policy body. However only too often, their presence means nothing for it is the governing bodies of each institution that makes the major decisions.

Unfortunately, few institutions have students on their governing bodies. Thus, a frustration is felt by most student leaders for they realize that they are involved in little more than busy work. The only way seen by most students to remedy this situation is to have students on their own governing bodies.

Thus, the Undergraduate Student Government at the Catholic University in Washington, D.C., wholeheartedly supports the Harris Amendment. Just as the eighteen year old vote was a large step forward in giving first class citizenship to the youth of this nation, so too would the Harris Amendment be another large step forward for responsible student determinism.

Sincerely,

JOSEPH HURLEY,
President of the Undergraduate Student Government at Catholic University.

HOWARD UNIVERSITY,
Washington, D.C., February 15, 1972.

HON. FRED R. HARRIS,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR HARRIS: This will acknowledge receipt of your letter of February 10, relative to students serving as members on the Board of Trustees of Howard University.

The Board approved the seating of two student members in April, 1970. Full membership was granted with no attendant restrictions, except for terms of office. Student Trustees are elected for a term of one year with eligibility for re-election for an additional year. Other Trustees are elected for a term of three years, with eligibility for re-election.

It has been the experience of the University that inclusion of students on the Board of Trustees has greatly embellished the character of the Board. The insight, input, and perspectives of these members have contributed to a more meaningful and representative body. Student members have themselves gained invaluable experience by participating in University governance at the highest level.

I am pleased to have the opportunity to present you with this information.

Sincerely yours,

OWEN D. NICHOLS,
Vice President for Administration.

NATIONAL STUDENT LOBBY,
Washington, D.C., February 15, 1972.

DEAR SENATOR: As you know, the Higher Education Act—S. 659 is up for a series of votes this week, including an Amendment by Sen. Fred Harris to place a student on the governing boards of colleges receiving federal assistance.

The Amendment would require any institution of higher education receiving federal monies (either in direct aid or through contract) to place at least 1 student on its board (Board of Directors, Board of Trustees, or Board of Regents). This student would have the same rights, privileges, and compensation (if any) as any other member of the board of that institution.

In the past many students on campuses across the nation have attempted to gain representation on the boards of their institutions. Some students have been successful, and Princeton University, Boston College, Vanderbilt University—to name a few—now have students on their boards.

These first students on boards have been extremely effective in increasing communication and understanding between students and the trustees responsible for those in-

stitutions. It is our strong feeling that had students been seated at the board meetings a few years ago, much of the turbulence which higher education has experienced could have been avoided.

We strongly urge your support for a student on the board of colleges. The National Student Lobby considers this amendment, along with substantial funding of the Higher Education Act, to be our No. 1 domestic priority among the 800,000 students in our member student bodies.

If you have further questions, or would like further information about the NSL, please give our office a call.

Very truly yours,

LAYTON OLSON,
In behalf of 94 college, community college, and university student bodies across the country.

TELEGRAMS

LOS ANGELES, CALIF.

SENATOR FRED R. HARRIS,
Washington, D.C.:

Lamar Lyons, student body president, undergraduate Mark Bookman, graduate student body president, and Fred Weiner, director of the UC student lobby at UCLA, fully support your Higher Education Act (S. 659).

LAMAR LYON,
Student Body President.

MARK BOOKMAN,
UCLA Undergraduate.
FRED WEINER,
Graduate Student Body President, Director UC Student Lobby UCLA.

MILWAUKEE, WIS.,
February 29, 1972.

SENATOR FRED HARRIS,
U.S. Senate,
Washington, D.C.:

We the students of Milwaukee Area Technical College, representing 52,000 students, endorse and support Senate Bill 659. We agree there is a need in our own school for students to actively participate on the school board of directors.

GERALD O'SULLIVAN,
President Student Government,
Milwaukee Area Technical College.

MAYNARD C. DOLLOFF, OF MAINE,
NEW PRESIDENT OF NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE

Mr. MUSKIE, Mr. President, may I invite the attention of Senators to the announcement that Maynard C. Dolloff, commissioner of the Maine Department of Agriculture, has recently assumed the presidency of the National Association of State Departments of Agriculture. He is the first Maine agriculture commissioner to become President of NASDA since its founding 56 years ago.

Maynard Dolloff has served a long and distinguished career in agriculture, as chairman and secretary of the executive committee of the National Grange for 12 years, as former president of the Northeastern group of NASDA, and at present as commissioner of the Maine Department of Agriculture for the seventh year. His elevation to president of NASDA is just recognition for his many years of effective leadership in addressing the problems of the agricultural community and his contributions toward solving them.

Gov. Kenneth M. Curtis, Governor of Maine, pointed out the importance of

Commissioner Dolloff's new office in the following message:

I am always gratified when national recognition comes to a state official. The recent elevation of Commissioner Dolloff to the presidency of the National Association of State Departments of Agriculture is a well deserved honor for him and cannot help but bring prestige to the State of Maine.

I want to take this opportunity to congratulate him and to assure him of my fullest support in this important position among the leaders of American agriculture.

NASDA's members include the agriculture commissioners from each State and from Puerto Rico, Virgin Islands, Guam, and Samoa, whose responsibility is to develop uniform procedures for cooperative agreements with the USDA and other Federal agencies. The association also cooperates with the Council of State Governments, the National Governors Conference, and the National Legislative Conference to coordinate programs within the State's market services and national trade developments.

HOW FDA KEPT THE LEAD IN CHRISTMAS

Mr. MONTOYA. Mr. President, of all agencies in the Federal Government which have come under fire recently, none has been on the receiving end of more criticism than the Food and Drug Administration. I have indicated on a number of occasions my extreme dissatisfaction with its activities and performance in the consumer protection area. As a result of this ongoing concern, another situation has come to my attention I believe worthy of this body's consideration. It concerns what I choose to call, How FDA Kept the Lead in Christmas.

It centers around an agreement, arrived at in complete secret between FDA and makers of potentially dangerous lead tinsel for Christmas trees. FDA initiated both meeting and agreement, without knowledge of Congress, consumer protection organizations, health professions, media and, of course, the public. From start to finish, the intention was to keep this entire plot, for such it is revealed to be, from all deeply concerned and affected parties. Here is how its scenario developed.

On February 11, 1971, Mr. Henry Verhulst, of FDA, addressed a series of inquiries to various medical authorities concerning the potential hazard of lead Christmas tree tinsel to young children. One such inquiry was addressed to Dr. J. Julian Chisholm, associate professor of pediatrics at Johns Hopkins University School of Medicine. He is associate chief pediatrician of the Baltimore City Hospitals. I have obtained a copy of Dr. Chisholm's response to FDA. I ask unanimous consent that it be printed at this point in my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BALTIMORE CITY HOSPITALS,
Baltimore, Md., February 23, 1971.

Mr. HENRY L. VERHULST,
Pharmacist Director, Acting Director, Division of Hazardous Substances, and Poi-

son Control PS-140, Bureau of Product Safety, Food and Drug Administration, Washington, D.C.

DEAR Mr. VERHULST: This is in reply to your letter of February 11, 1971 concerning the potential hazard of lead Christmas tree tinsel to young children. If ingested, such tinsel would be potentially hazardous if the following conditions were fulfilled. There are several reports in the medical literature that indicate that metallic lead substances, if retained in the stomach, will be slowly dissolved. Under these conditions, sufficient amounts of lead can be absorbed to produce clinical lead poisoning, even in normal children. The literature indicates that the material will have to remain in the stomach for a period of one to two months. The question then is whether the tinsel would pass quickly through the gastrointestinal tract or whether it would be retained. This the FDA could very quickly determine in animals by simply rolling up a ball of tinsel, introducing it into the animal's stomach and taking serial X-rays to determine the disappearance time. I suspect that a young child with pica might very well roll up the tinsel in a ball and swallow it. However, I know of no scientific proof of this suspicion. So much for the potential hazard to normal children. If, however, a child already has a high lead level in blood and tissues, then the absorption of even small additional amounts which might result from a shorter residence time of the tinsel in the gastric intestinal tract would certainly pose a serious health risk.

With respect to the available action options, I would be inclined to declare the product a "banned hazardous substance," thereby removing it from commercial channels. Since alternative tinsels of aluminum and plastic composition are available, according to your letter, there seems to me to be very little sense in continuing the distribution of a potentially hazardous product, even though the precise hazard of that product is not documented scientifically. I would strongly urge you to request, however, that the FDA do the simple animal experiments along the lines suggested above. This, it seems to me, might buttress any testimony, should that become necessary. I would be willing to testify, should that become necessary and my testimony would follow the statements in this letter.

Yours sincerely,

J. JULIAN CHISHOLM, Jr., M.D.,
Associate Professor of Pediatrics, Johns
Hopkins University School of Medicine,
Associate Chief Pediatrician.

Mr. MONTOYA. Mr. President, note the following two quotations from his letter:

There are several reports in the medical literature that indicate that metallic lead substances, if retained in the stomach, will be slowly dissolved. Under these conditions, sufficient amounts of lead can be absorbed to produce clinical lead poisoning, even in normal children.

With respect to the available action options, I would be inclined to declare the product a "banned hazardous substance," thereby removing it from commercial channels.

Mr. President, according to an FDA fact sheet, GSS-HS1-571, this agency possesses the following authority:

The Child Protection Act of 1966 authorized FDA to ban from interstate commerce those household substances so hazardous that warning labels are not adequate safeguards.

It is to be presumed that appropriate officials in FDA's Bureau of Product

Safety were aware of their authority under existing legislation when this information came to them.

For the past several years, a significant hue and cry has been raised about problems of childhood lead poisoning. An excellent piece of work has been produced on this subject by Jane S. Lin-Fu. It is entitled "Childhood Lead Poisoning . . . An Eradicable Disease." This article has been reprinted by the U.S. Department of Health, Education, and Welfare, parent agency of FDA. There is a pertinent quotation from that article:

The answer is that many health workers who work among the poor are not aware that lead poisoning in children is still a problem. They apparently think that the mandatory use of lead-free paint for toys, furniture and interiors of dwellings during the past quarter century has eliminated the problem. Furthermore, childhood lead poisoning is a disease that health workers may not recognize, even though it exists in epidemic proportions, because it has no distinctive clinical features. The symptoms of childhood lead poisoning are non-specific. Anemia, listlessness, excessive irritability, loss of appetite, abdominal pain, constipation—signs and symptoms that appear before obvious evidence of encephalopathy, such as vomiting or convulsions—can all be misinterpreted as indications of some other illness. Because children who suffer from lead poisoning come from the slums, their anemia may be considered to be the result of inadequate nutrition; their listlessness and excessive irritability, to be the results of a pathological home environment; their abdominal pain and vomiting, to be symptoms of indigestion and gastroenteritis. Even convulsions may be regarded as signs of epilepsy rather than as evidence of lead encephalopathy.

On all sides there has been a rising level of awareness regarding hazards of lead ingestion by Americans. The Lead-Based Paint Poisoning Prevention Act recognized the problem, aiming at removing old lead-based paint from existing housing and forbidding its use in federally financed housing. The growing body of evidence indicating the severity of the problem is illustrated by a story in the Washington Post of March 10, 1972.

I ask unanimous consent that it be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TWENTY-FIVE PERCENT OF D.C. CHILDREN TESTED HAVE UNSAFE LEAD LEVELS (By Bart Barnes)

City health officials announced yesterday that 25 percent of all children tested in a nine-month screening program in Washington's model cities area were found to have unsafe lead levels in their blood.

Thirty had to be hospitalized, the officials said, and the others were treated at hospital outpatient clinics and at neighborhood health clinics.

The screening program started last April and ran through December. It was the most extensive survey to date of lead levels in the blood of inner city children and was done by the Community Health and Hospitals Administration under a \$204,154 grant from the Model Cities Commission.

Lead poisoning which usually results from the eating of lead-based paint that chips off woodwork, doors, windowsills and plaster of old houses, can cause severe mental retardation or even death.

It is most common among children between

the ages of 1 and 6 in the inner city where many old houses were painted with lead-based paint before World War II and which now are deteriorating.

Once thought to be the finest of interior paints, lead-based paint was used extensively in the homes of the wealthy in the pre-World War II era. Many of those homes are now the inner city tenements. Currently, lead-based paint is illegal for interior use.

Katherine James, coordinator for the lead screening program, said 2,214 children were tested for blood lead levels in the model cities area, which encompasses a 2.3-square-mile crescent north of Massachusetts Avenue and includes the Shaw, Stanton Park and Trinidad neighborhoods of the city.

Mr. James said 568 of those children had lead levels of 40 or more micrograms per 100 milliliters of whole blood, a level that physicians consider to be unsafe.

On a second testing, she said, the lead levels in 131 of those children had subsided to below 40 micrograms but the others were still above 40.

Mrs. James said removing the child from a home or an apartment where there was peeling lead-based paint or removal of the toxic paint could account for the levels subsiding in the 131 children. As long as no further lead is being ingested, the body gradually will rid itself of the lead contents, she said.

In every case where a lead level tested above 40 milligrams, Mrs. James said, the housing inspectors were sent to test the paint in the child's house or apartment for the content. Paint with a content of 1 percent lead or more was ordered removed.

The 25 percent who had dangerously elevated blood levels is less than the 33 percent indicated for elevated levels based on initial results of the screening program of November.

But it is still at the top span of 10 percent to 25 percent with elevated blood lead levels found by the Department of Health, Education and Welfare during 1970 in Baltimore, Minneapolis and Philadelphia inner city children.

It is also, Mrs. James said, consistent with a range of 10 percent to 25 percent of elevated lead levels among children tested regularly at neighborhood health clinics around the city.

City officials said they are seeking a \$527,861 grant from the Bureau of Environmental Management, an agency of the Department of Health, Education and Welfare, to extend the screening program to all areas of the city.

Mr. MONTROYA. Recently the Environmental Protection Agency announced it is ordering a reduction in gasoline lead content as a public health step. Bearing these cumulative facts in mind, let us then return to people in the Bureau of Product Safety at FDA.

Mr. Verhulst also sent out a letter on February 11, 1971, to the commissioner of health of the city of New York, Dr. Mary C. McLaughlin.

I ask unanimous consent that Dr. McLaughlin's reply be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE CITY OF NEW YORK,
March 4, 1971.

MR. HENRY L. VERHULST,
Pharmacist Director, Acting Director, Division of Hazardous Substances and Poison Control, Bureau of Product Safety, Food and Drug Administration, Washington, D.C.

DEAR MR. VERHULST: In reply to your letter of February 11, 1971 regarding lead Christmas tree tinsel, it is our opinion that the safest and best course of action would

be to ban the use of lead as Christmas tree tinsel because:

1. A warning that it is a hazard probably would not protect against the hazard, and
2. There are all sorts of excellent commercial tinsels available which are non-toxic.

I hope this information is helpful to you.

Sincerely yours,

MARY C. McLAUGHLIN, M.D., M.P.H.,
Commissioner of Health.

Mr. MONTROYA. Mr. President, let me emphasize one quotation from her letter to FDA:

It is our opinion that the safest and best course of action would be to ban the use of lead as Christmas tree tinsel . . .

Note that the letter from Dr. McLaughlin was dated March 4, 1971. FDA's people digested these facts for the rest of March, all of April, May, June, July, and much of August 1971. Obviously, the realities revealed shocked them into inaction.

On August 12, 1971, FDA's Bureau of Product Safety called a meeting of all domestic manufacturers of lead-foil icicles, or Christmas tree tinsel. This meeting was not advertised or publicized in any way. The public, Congress, consumer protection groups, and the media were left totally in the dark as to what was transpiring. This gathering was held in the office of Malcolm Jensen, Director of FDA's Bureau of Product Safety.

At the meeting, the FDA people proposed the following secret deal:

No manufacture of lead icicles after Christmas, 1971.

No sale of lead icicles after Christmas of 1972.

If all six affected companies agreed to the first two items, the Bureau of Product Safety would recommend that FDA accept this voluntary action and take no rulemaking or court action with regard to lead icicles until conclusion of the 1972 Christmas season.

In order to minimize manufacturer loss, FDA would not initiate or publicize the agreement or the alleged dangers from lead icicles until the conclusion of the 1972 Christmas season.

FDA would take whatever action would be appropriate to have the Bureau of Customs of the Treasury Department ban import of Christmas lead icicles at the conclusion of this Christmas season—1971.

Mr. President, I have in my possession the complete text of three letters from three different lead-tinsel manufacturers to Malcolm Jensen, head of FDA's Bureau of Product Safety, confirming this agreement; this astounding agreement. I ask unanimous consent that they be printed at this point in the RECORD. The first of them, from Paper Novelty Manufacturing Co., of Stamford, Conn., is the most revealing and complete, and I include it first.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

PAPER NOVELTY MANUFACTURING CO.,
Stamford, Conn., August 26, 1971.

Re Christmas Lead Icicles

MR. MALCOLM W. JENSEN,
Director, Bureau of Product Safety, Food and Drug Administration, Washington, D.C.

DEAR MR. JENSEN: Our attorney, Steven D. Newburg-Rinn, has reported to us concern-

ing the meeting held in your office on August 12, 1971, as to the possible hazards caused by the ingestion of lead Christmas Icicles by children.

As I understand it, you proposed at the meeting that the six manufacturers of lead Icicles agree 1) not to manufacture any lead Icicles after Christmas 1971 and 2) not to sell any lead Icicles after Christmas 1972. If all six manufacturing companies agree to this proposal, it is my understanding that you will recommend that your agency accept such voluntary action and take no rulemaking or court action with regard to lead Icicles until the conclusion of the 1972 Christmas season. You also stated at the meeting that in order to help mitigate the economic losses to be suffered by the manufacturers, your agency would not initiate or give any publicity to the voluntary agreement of the Icicle manufacturers or the alleged dangers from lead Icicles until the conclusion of the 1972 Christmas season. We also understand that you agreed at the meeting that were the manufacturers to take voluntary action to take lead Icicles off the market, your agency would take whatever action is appropriate to have the Treasury Department (Bureau of Customs) ban the importation of Christmas lead Icicles at the conclusion of this Christmas season.

Paper Novelty is willing to proceed in the voluntary manner you have suggested. We hereby offer to cease manufacturing lead Christmas Icicles after Christmas 1971 and not to engage in any sales of Christmas lead Icicles after Christmas 1972.

Should you have any questions regarding this matter, please feel free to contact me at the above address or our attorneys, James B. Blinkoff and Steven D. Newburg-Rinn of Fried, Frank, Harris, Shriver, & Kampelman, Suite 1000, 600 New Hampshire Avenue, N.W., Washington, D.C. 20037, 965-9400.

Sincerely,

CHARLES G. MOSES,
Executive Vice President.

BRITTE STAR MANUFACTURING CO.,
August 25, 1971.

MR. W. JENSEN,
Director,
Public Health Service
Food and Drug Administration
Washington, D.C.,

DEAR MR. JENSEN: On August 12, 1971, your department called a meeting of the manufacturers of lead foil icicles.

At said meeting, your department requested withdrawal of lead foil icicles from the market.

We agree to stop manufacturing all lead foil icicles after Christmas 1971, and will not sell any lead foil icicles after Christmas 1972.

If our industry agreed voluntarily to phase out lead foil icicles by Christmas 1972, your department would not give this information to the news media or inflict a banning order until after Christmas 1972.

Also, you stated that you would see that the Treasury Department would stop all importation of lead foil icicles after Christmas 1971.

Sincerely yours,

ISRAEL KINDERMAN,
President.

THE GEORGE FRANKS SONS CO.,
Baltimore, Md., August 30, 1971.

MR. M. W. JENSEN,
Director, Bureau of Product Safety, Food and Drug Administration, Washington, D.C.

DEAR SIR: This letter is being written in response to the meeting held in your office on August 12th with all the domestic manufacturers of lead foil Christmas Icicles. Our company was represented by Perry H. Wilt, a vice-president of our company.

It is my understanding from talking to our Mr. Wilt after the meeting that the manufacturers would agree to the following: All man-

manufacturing of lead foil icicles would cease at the end of 1971. Sale of these icicles would stop after Christmas 1972. If the industry would consent to the above, I understand your agency would agree not to initiate any legal action with regard to these lead icicles until after Christmas 1972, at the earliest. Also, your agency would not issue any publicity nor news releases concerning the possible hazards of this product until the end of next year's Christmas selling season. Foreign manufacturers of this item would also be covered by this agreement through action you would take with our U.S. Bureau of Customs.

If the other domestic manufacturers of these lead icicles are willing to abide by this voluntary agreement, our company will also offer not to manufacture these lead icicles after this year and not sell them beyond Christmas 1972.

If you have any questions or suggestions, I will look forward to hearing from you.

Yours truly,

EDWARD P. FRANKE,
President.

Mr. MONTTOYA. Mr. President, here, then, is what FDA proposed to do.

First, let tinselmakers manufacture this deadly material from the middle of August 1971 until the end of Christmas, 1971. This is a period of almost 4½ full months. No exercise of authority to remove tinsel from the market under previously described existing authority was even mentioned, much less contemplated.

Second, allow full and free promotion and sale of this tinsel for the remainder of 1971 and all of 1972; two complete holiday seasons.

Third, take absolutely no action against the product during this entire period of time.

Fourth, within FDA suppress and not offer to make available any publicity of the agreement or news of danger from such tinsel to consumers for that entire period of time, which comes close to a year and a half.

Fifth, insure that foreign lead tinsel was banned after the end of the 1971 holiday season, presumably allowing domestic manufacturers to make a killing in the 1972 season under terms of the secret agreement. How is that for helping our balance of payments?

On October 14, 1971, Mr. Jensen wrote the president of the Stamford, Conn. company, thanking him before his cooperation. Presumably, the secret agreement was arrived at and implemented. I ask unanimous consent that the text of this letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OCTOBER 14, 1971.

Mr. CHARLES G. MOSES,
Executive Vice President, Paper Novelty Manufacturing Co., Stamford, Conn.

DEAR Mr. MOSES: We have received replies from each of the companies manufacturing lead tinsel stating that the production of the lead tinsel will be discontinued by Christmas 1971 and no sale will be made after January 1, 1973.

We are grateful to each producer for his decision to remove this one source of lead from the child's environment, thus helping to reduce the occurrence of lead poisoning.

The cooperation of several industries in reducing or removing the lead content in household products accessible to children

will eventually eliminate this threat to the health of the children of the nation.

Your assistance and that of all other members of your industry are sincerely appreciated.

Sincerely,

M. W. JENSEN,
Director,
Bureau of Product Safety.

Mr. MONTTOYA. Mr. President, one of our distinguished and most courageous colleagues, the Honorable JOHN MOSS, of California, first exposed this unholy secret agreement. He promptly demanded that Jensen issue a public warning. Jensen vigorously defended the FDA deal, stating:

"The best information," from the Nation's 580 poison control centers and other sources indicated, "not one single case" of illness in a child from ingesting tinsel.

In other words, Mr. Jensen told Representative Moss that there was nothing to worry about.

Yet in his letter to Mr. Moss, president of the Paper Novelty Manufacturing Co., Mr. Jensen writes that the eventual termination of the production and sale of lead tinsel would help "to reduce the occurrence of lead poisoning." He continues, describing, "This threat to the health of the children of the Nation." In this letter, which he obviously never intended to see any light of exposure, he readily concedes this threat. Yet when first confronted with revelation of the secret deal, he denigrates the possibility of any threat posed by lead tinsel to America's children. Conscience is certainly a marvelous thing. One could get the impression that Mr. Jensen's opinion of the danger of lead poisoning from tinsel depends on who he is writing to.

Let us bear in mind the letter Mr. Jensen and Mr. Verhulst received from the pediatrician in Baltimore and the commissioner of health of New York City. Both recommended removal of this product from the market. Both indicated there was a significant possibility of hazard from lead tinsel. Let us also recall another quote from Dr. Chisholm's letter.

If, however, a child already has a high lead level in blood and tissues, then the absorption of even small additional amounts which might result from a shorter residence time of the tinsel in the gastrointestinal tract would certainly pose a serious health risk.

His letter was addressed to Mr. Henry Verhulst in late February 1971. Mr. Verhulst is Director of the Nation's federally funded 580 Poison Control Centers. Presumably, if Mr. Jensen, after Congressman Moss asked for a warning, consulted with the Poison Control Center Director on a question of death from tinsel of this kind, he also asked or was informed by him of the other contents of Dr. Chisholm's letter. Or, perhaps, he did not.

At the very least, a public warning of the severest sort was merited. A ban on the product certainly should be considered. Or, perhaps, a series of tests on animals such as were suggested by Dr. Chisholm. Certainly FDA has such facilities immediately at hand.

Bear in mind the following two facts: These tinsels are approximately 77 percent lead.

Other commercial tinsels, usually made of plastic, are easily available. These are safe, according to Dr. McLaughlin's letter of March 4, 1971.

Similar advice was given FDA by the environmental medical service of the Massachusetts Institute of Technology. Their words of warning were also ignored; totally and completely.

One would think that any public official, especially those involved in such work at FDA, would immediately suspect any product with such an overwhelming lead content. Easy availability of good substitutes offered a perfect alternative. Both factors were ignored by people charged with public safety; the safety of America's children. Representative Moss stated in his letter to Jensen that he knew of no authority for withholding such information from the public.

Mr. President, there, then, is the full story as far as I know it up to now. One point should be stressed. The office involved in this secret deal at public expense has been brought into question before in a variety of ways. The FDA's Bureau of Product Safety has proved to be a major bottleneck against enforcement of the Poison Prevention Packaging Act of 1970. From secret technical advisory meetings to closeness with industry lobbyists, this Bureau has raised a number of questions of propriety by its behavior in regard to this law.

An enormous furor has been raised in regard to this office over the Safe Toy Act, which sat unenforced for a lengthy period.

Now the same operation is directly involved in promoting secret meetings, proposing a secret deal and seeking to protect a potentially deadly product at the expense of the American public.

All these happenings are not accidents. A distinct anticonsumer pattern emerges from them that is undeniable, to say the least.

It will be fascinating in the extreme to hear what excuses will emanate from the FDA now. Will they say they had no personnel? Or will it be not enough money? Or will it be that they did not understand the law? Or that they did not understand that what they did was highly questionable? Perhaps we might even be treated to a new excuse.

FAP ADVOCATES WANT TO SEE CHILD CARE STANDARDS LOWERED

Mr. HARRIS. Mr. President, one of the key sections in the welfare reform provisions of H.R. 1 is title IV, which includes the family assistance plan, FAP. The purpose of FAP is to get mothers of dependent children off welfare, to save money by forcing mothers of children to go out of the home and take whatever jobs are available. Money for day care is provided as part of the package. Day care is the carrot; loss of benefits is the stick.

No savings can be made, however, if adequate day care is provided by the Federal Government. Adequate day care for the preschooler and two school-age children the average welfare mother has

would cost \$4,500 a year. The wages the mother could earn, working 50 weeks a year at the minimum wage, come to \$3,200 per year. That kind of mathematics would kill chances of the so-called welfare reform bill passing. If the extra costs for just 150,000 welfare families are computed on the basis of providing adequate child care, the net loss from such welfare reform would amount to \$195 million the first year.

But FAP advocates are in a bind. Existing Federal requirements and regulations in many States are such that the only kind of child care that can be legally provided is adequate—and therefore somewhat expensive—care. If the existing Federal and State laws and regulations regarding the care of children are left unchanged, the day care needed to make welfare reform work could not be provided.

FAP advocates made the only move possible under the circumstances. WILBUR MILLS made an official request to HEW for:

*** a report and recommendations based on a thorough review, in cooperation with State and local officials, of existing Federal standards as well as State and local licensing requirements in order to determine those requirements which are essential both to protecting the child and assuring an appropriate program for him.

Mr. MILLS asked that the report be furnished by February 1, 1971.

Mr. MILLS was very frank about his reasons for wanting the report, saying:

*** Your committee is also concerned that unreasonable Federal, State and local standards and licensing requirements have interfered with the provision of essential child care services, and may prove a barrier to development and provision of the services essential to the success of the Family Assistance Plan."

The Nixon administration not only provided money from the Office of Economic Opportunity and the Office of Child Development for a contract with a firm to respond to WILBUR MILLS' request but also went a step further. The administration also began a revision of the Federal requirements aimed at lowering them—and, thus, the cost of day care—and decided to write a "model day care facility licensing code" which would lower existing State and local regulations.

The administration-funded project is now in its third phase, and the "model code" which was developed to meet WILBUR MILLS' objections is now being revised. The next step, according to the contractor running the project is:

*** official endorsement by the Federal government and possible subsequent acceptance of part or all of the models by state and local authorities.

The timetable for this part of the "welfare reform" strategy is not working out well. At the Federal level, strong bipartisan support is developing for retention of the existing Federal requirements as a quality floor. Senator RIBICOFF, whose statement—CONGRESSIONAL RECORD, volume 117, part 24, pages 31241-31242—signaled the beginning of a continuing effort by the Senate to "exercise its legisla-

tive oversight" is leading the fight in the Senate.

The House most recently gave notice that it supports the requirements when H.R. 12350, the bill to extend the life of OEO, was passed on February 12, 1972. That bill includes a section similar to that introduced in the Senate by Senator RIBICOFF which requires programs to meet the existing Federal requirements. Despite some opposition—Representative RARICK attempted to link day care requirements to "local control of the schools"—CONGRESSIONAL RECORD, February 17, 1972, pages 4295-4296—the bill passed with the language Representative RARICK opposed intact.

Efforts to water down requirements for adequate day care can be expected to continue. But parents that would have to place their children in such custodial programs, and community groups that now are operating adequate programs will have a chance to comment on the activities. As a result of protests made by representatives of parents and community-operated programs, at a San Antonio meeting called by the Office of Child Development to "sell" their "model code" to a national conference, a contract was given to the designated organization chosen by those representatives, the Center for Community Change, to get other reactions to the "model codes."

The Center for Community Change's contract calls for a series of nine workshops throughout the country at which parents and their representatives can comment on the "model codes." Dates of the workshops and sites are: March 10-12, Frogmore, S.C.; March 17-19, Albany, N.Y., and Phoenix, Ariz.; March 24-26, Cincinnati, Ohio, and McAllen, Tex.; April 7-9, Lawton, Okla., and Lancaster, Pa.; April 14-16, Portland, Oreg., and Omaha, Nebr.

Directing the project for the Center for Community Change is Maurine McKinley, on leave from the Black Child Development Institute in Washington. Information about the project and the workshops may be obtained by contacting Maurine McKinley or other project staff members at the Center for Community Change, 1000 Wisconsin Avenue, N.W., Washington, D.C., 20007. Telephone (202) 338-6310.

Information may also be obtained from any of the organizations working with the project, who constitute the project committee. Those organizations, in addition to the Black Child Development Institute and the Center for Community Change, are: Ad Hoc Committee of Southeast Community Child Care Operators; American for Indian Opportunity; American Friends' Service Committee; Child Welfare League of America; Frente Unida de Educadores Puertorriqueños; Interstate Research Associates; National Urban League; Washington Research Project.

INNOVATIONS IN VA MEDICINE

Mr. CRANSTON. Mr. President, Dr. Marc J. Musser, the very able Chief Medical Director of the Department of Medicine and Surgery of the Veterans' Ad-

ministration, authored an excellent article which appeared in the January 15 issue of U.S. Medicine. He describes the successful efforts made recently to insure that the VA system maintains its effectiveness and flexibility in meeting new situations and new challenges. Specifically, he cites the successes achieved through regionalization of medical programs, expansion of drug dependence treatment centers, improvements in hospital medical recordkeeping systems, increased association and involvement with medical leaders outside the Veterans' Administration, improvements in VA staff participation in policymaking decisions within VA facilities, and programs to make the medical treatment more pertinent to today's needs, such as a pilot program to utilize ambulatory care rather than bed care.

The Subcommittee on Health and Hospitals, which I am privileged to chair, of the Veterans' Affairs Committee, on February 16 reported to the full committee for action on S. 2354 and S. 2219, legislation I have authored to strengthen the VA's ability to continue and increase the scope of these improvements and enhance the VA's capacity to meet new health care challenges as they develop. Full committee action on this legislation and veterans' drug treatment legislation—S. 2108—is scheduled for March 28.

I believe that Dr. Musser's article provides information that will be of great interest to Members of the Senate and will portray to them some exciting developments and innovations in the Veterans' Administration medical program today. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From U.S. Medicine, Jan. 15, 1972]

VA REGIONALIZATION FEARS PROVE FALSE

(By Marc J. Musser, M.D.)

In an article a year ago in this publication, I discussed the changing patterns in the delivery of health care in the nation, and defined what I considered to be the appropriate role of the health care system operated by the Veterans Administration's Department of Medicine and Surgery in the context of national needs. The passage of a year has sharpened what I feel is, and will be, the vital and pivotal position of that system in the national health picture.

The major challenge facing any health care institution or organization today is its potential to make quality care as readily available as possible to all of the people it was established to serve. I define the challenge to the VA health care system in the same terms with the added challenge of realizing its full potential as a part of the country's total health care system. Everything the VA does in patient care, education, and research in each of its hundreds of facilities in every section of the country is geared to meet both of those challenges.

At least two lessons are apparent in the current VA system. First, its quality and availability of service for all of the veteran patients it is charged to care for has established a model of equity to match efficiency and economy in a total health care system. Second, the flexibility of the system is such that it can readily expand or adjust its facilities, services and the population served,

or any one or combination of these. In short, the VA health care system can, if called upon, do more for more people.

In this past year, our efforts as described in the following selected areas of activity have been directed toward insuring that the VA system remains workable and responsive to professional, social, and economic changes, all of which are directly related to meeting and solving these challenges.

REGIONALIZATION

In my previous article, I reported the first step in the VA's program of regionalization—the activation of the Southern California Medical District. We have moved rapidly since that time; 17 additional districts have already been activated and four more will be by July. We expect to reach our planned goal of 37 districts by the end of calendar year 1972.

We are proud of this particular phase of VA operations. It shows the flexibility and adaptability that is an inherent part of our system. It proves that size is no deterrent to progress. Unfortunately, the private sector seems to be having some difficulty in bringing together its autonomous institutions and organizations through voluntary planning agencies, into a viable, effective undertaking.

When we began our regionalization program a year ago, some fears were expressed that it would result in a reduction of professional and institutional autonomy in the VA system. Some people thought regionalization was a serious threat to a status quo they had come to accept. Others saw it as "centralization."

I am happy to report that none of these fears has been realized. On the contrary, the benefits of our regionalization efforts are now beginning to be realized.

For example, we are guided by the principle that a facility which has the best cardiology diagnostic service in a particular regional district should be able, and encouraged, to use this service to benefit all the facilities in the region. This may mean that hospitals in that region will refer more cases of different types to other facilities within the region which have better services for those particular conditions.

In other words, each facility is encouraged, so far as is possible, to do more of the things it does best and to do fewer of the things it does less well or less economically. The result, we expect, will be optimum use of each service in each facility, optimum use of the region's facilities, thereby realizing optimum use of the total VA health care system.

IDEAL STAGE NOT REACHED

Of course, we have not yet reached that ideal stage by any means, and perhaps we never will. But it will not be for lack of effort, as evidenced by the progress of the past year.

The problem of drug dependence has generated social and political pressures upon the VA system. Our goal is the immediate treatment of every eligible veteran who comes to us for help in overcoming a drug abuse problem. The VA is aggressively pursuing the President's mandate and is cooperating wholeheartedly with his Special Action Office of Drug Abuse Prevention in ameliorating the drug problem and rehabilitating the drug victim in our veteran population.

From January 1, 1969, through June 30, 1971, the VA treated and discharged 7,856 patients manifesting drug abuse or dependence. We expect this figure to increase greatly this year.

Five drug dependence treatment centers were established in the VA fiscal year 1971. The Washington, D.C., VA hospital started up the first unit in October 1970 and four more units began operating in January 1971 in New York City; Houston; Battle Creek, Mich.; and Sepulveda, Calif. Thirteen more

centers were activated in July. Additional drug programs were planned for July 1972 but because of the urgency of the situation, we requested a \$14 million supplement to our budget to enable us to advance the opening of 14 more units. This funding was granted and as of now we have 32 centers in operation.

To provide easy access to services for many veterans who do not live near a drug dependence treatment center, we began early to plan "satellite" clinics in major population centers across the country.

These clinics will be most useful to veterans being treated with methadone maintenance and will be activated as needed. They will be located within the community and will be staffed by an ex-addict counselor, a part-time doctor, and a pharmacist or nurse authorized to dispense drugs.

Personnel from the nearest center will, on an itinerant basis, provide treatment and testing as needed. Counseling and other assistance also will be provided as needed. Two such clinics were opened recently in Houston and in San Francisco.

Our total capacity to treat eligible cases will be much greater than the number of beds of the units. We anticipate each bed will be turned over about 12 times a year so that approximately 6,000 veterans will be detoxified and started on a rehabilitation program on outpatient status.

As before, veterans with drug abuse and related disorders will continue to be accepted into our regular general medical and psychiatric wards, regardless of location. After initial treatment, they will be transferred to an appropriate addiction facility.

In line with our regionalization efforts, we have selected an additional 28 sites where drug dependence treatment centers may be established in July, depending upon the need and the resources available.

AREA HEALTH EDUCATION CENTERS

In introducing the concept of area health education centers, the Carnegie Commission on High Education recommended the development of consortia or other special cooperative arrangements among educational and health care institutions in communities not served by medical schools or major medical centers. The purpose of these centers was to strengthen and expand health manpower programs and thereby add to the quality and availability of health care.

The commission identified 16 such communities in which the VA hospitals were named as the institution most immediately capable of serving as a focal point for an area health education center. A subsequent assessment of VA's unaffiliated hospitals identified eight with an unusual potential in terms of hospital and community resources.

Visits to these eight communities were made with representatives of the Bureau of Health Manpower of the National Institutes of Health, the Health Services and Mental Health Administration of the Department of Health, Education and Welfare, and the VA central office.

The purpose of the visits was to identify interests and capabilities of those VA hospitals and communities in working together to develop community projects, given the appropriate support. Several of the eight hospitals have submitted proposals for developing plans to implement such area centers.

While the VA is providing immediate support for the necessary planning, it is expected that additional support will be forthcoming when new legislation is enacted and funds provided to enable the Department of Health, Education and Welfare to actively participate.

One of the major deficiencies in modern

health care delivery is the complexity and inadequacy of the clinical record. As a result, the VA health care system has undertaken a number of pilot projects designed to improve this. Recently, both hospital staffs and central office have indicated interest in the concept of the problem oriented medical record.

Brought to national prominence by Dr. Lawrence L. Weed of the University of Vermont, this concept is an attempt to take the many problems with which the clinician must deal and arrange them in a systematic fashion to eliminate vague recordkeeping. By doing so, the clinician is assured better diagnosis, treatment plan, and follow-up capability.

A recent survey revealed that 50 VA hospital medical services already have adopted the Weed System. A steering committee for problem oriented medical record implementation has been established to conduct a pilot study of feasibility and acceptance of the system. There will be a follow-up study of the effect and use of the problem oriented record on the quality of health care delivery in those hospitals.

This approach, if thoroughly understood and efficiently used, can become an effective aid in providing comprehensive health care within the context of the VA system. It is a prime example of the ability and capacity of the VA to take new developments, implement them system-wide, study them, and make them available to other health care systems. It is the ideal for a collaborative effort in health systems research.

RESEARCH

In connection with research, a recent event demonstrated the capacity of the VA's health care system to do what no other single health care system or institution in the country can do. This was the presentation to Dr. Edward D. Freis of Washington, D.C., VA hospital of the 1971 Clinical Research Award of the Albert and Mary Lasker Foundation for his work in showing the life-saving effectiveness of diagnosis and treatment of moderate hypertension. Believing that even moderate hypertension is dangerous and that it should, and can, be treated, Dr. Freis and his colleagues set up the VA cooperative study group on antihypertension agents in 1964. The five-year study, in which 17 VA hospitals cooperated, established two major points:

That drug treatment for moderate hypertension reduced the death rate by more than 50 per cent.

That drug treatment is 67 per cent effective in preventing major complications which arise from cases of even moderately high blood pressure. These complications include, among others, strokes, congestive heart failure, and kidney failure.

All citizens should be entitled to health care which is comparable to that provided for VA beneficiaries. Consequently, the VA, as a total health care delivery system, or as an individual health care facility within a community, cannot fail to concern itself with the quality of health care and the needs of individuals and institutions in the private sector. Cooperation between VA facilities and those of the private sector is critical to the realization of this social goal.

VA's legal authorizations for community involvement are broad; they encompass a wide array of academic affiliations, sharing, and agreements related to exchange of medical information.

Recently, we have taken vigorous steps to strengthen VA ties on many fronts. Our special medical advisory group, which acts in an advisory capacity to the administrator, is a focal point for these developments. We have attempted to make this group representative of all the country's health care institutions, organizations, and interests. By the same token, we have attempted to actively

relate VA health care activities and staff to those organizations.

Dr. Edwin L. Crosby, executive vice president of the American Hospital Association, now serves on the special medical advisory group. I have been elected to the board of trustees of the American Hospital Association. Twice during the past six months, representatives of the Department of Medicine and Surgery have attended meetings of each of the five councils of the American Hospital Association. And in August, the administrator of veterans affairs was invited to address a plenary session at the annual convention of the association.

KNOWLEDGE LIMITED

Statistics indicate that nearly two-thirds of the practicing physicians of America have received some or all of their postgraduate education in VA health care facilities. However, it is obvious that these physicians really have limited knowledge and understanding of the VA health care system from their relatively short experience as residents, interns, or clinical clerks in one or another VA hospital. We are developing better orientation programs for the members of our current and future house staffs.

In addition, we are seeking to inform physicians already in practice about the VA health care system as both a local community resource and as a flexible national system. We are encouraging VA hospital directors and professional staff to become more involved with their colleagues in the community in planning and implementing community-oriented health care activities, and in establishing two-way communications with state and national health organizations. To help achieve these goals, we invited Dr. Russell B. Roth, speaker of the house of delegates of the American Medical Association, to become a member of the special medical advisory group and he has accepted.

ADVISORY GROUP MEMBERS

Several medical school deans or members of their faculty have always been members of the advisory group. The addition of Dr. John Gronvall, dean of the University of Michigan Medical School, to the group now brings the medical school representation to 13 of the total membership of 23.

The reality of the affiliation of 96 VA hospitals with 83 of the country's medical schools was affirmed by the establishment this past year of a new liaison committee of representatives of VA's Department of Medicine and Surgery and of the Association of American Medical Colleges. VA involvement and investment in medical education are now acknowledged by that national organization representing medical education. The association has testified on various legislative proposals before the Congress on veterans' affairs and one the VA health care budget during the past year, and has done so in concert with us.

National officers, eloquently and very directly, expressed deep concern not only about their own personal situations, but, more importantly, about their professional feelings in regard to quality of patient care in the VA system. They pointed up the fact that communications among house officers, the hospital directors, and the VA staff in central office were either non-existent or in need of improvement.

HEALTH AND ENVIRONMENT DIRECTORATE

We have now formally requested all hospital directors and staff to work more closely with members of our house staffs to improve not only the care of the veteran patient, but also their personal and professional working conditions. The result had been that house staff physicians are now serving on policy-making bodies which are dealing in matters of major concern to them personally, and to

the mission of the Department of Medicine and Surgery. For example, questionnaires sent out in July established the fact that house staff members were serving on various advisory committees at 35 VA hospitals.

Directly related to this is the fact that two young PHS physicians are now working in my office. Drs. Clement Lucas and Bryan Arling began in July to develop a new office of house staff affairs and to serve as ombudsmen for all VA house staff. Not only are house staff members calling them about their problems, but regular staff people are also contacting them regarding their problems with house staff.

A second VA house staff conference was held early in November. We plan to continue these conferences on a permanent basis. Further, the Department of Medicine and Surgery is also providing assistance for the second national house staff conference to be held in Atlanta in March.

AMBULATORY CARE

In my article last year I mentioned a pilot study structured to give VA admitting physicians the option of placing applicants in an ambulatory hospital care category as an alternative to bed care. More than 8,000 patients in 12 hospitals participated in the test. Our acceptance rate rose 30 per cent, if inpatient and outpatient rates are combined.

In general, patient response was quite favorable, though most were unaware that this was a new program. All 12 chiefs of staff responded enthusiastically to the program. Their recommendations dealt primarily with the passage of enabling legislation and the provision of adequate staff, funding, and space to carry out the program.

The findings were sufficiently encouraging to warrant continued study. Four of the original hospitals were retained for further study and nine new hospitals were added. These later data generally conformed to the findings in the initial test, but with some increases in workload. The number of applicants will probably increase by 10 per cent in 1973 but only by 5 per cent in 1974 and by 3 per cent in 1975.

The principle of ambulatory care as a substitute for hospital care is under active consideration in Congress. H.R. 10880, the Veterans Medical Care Act of 1971 (the so-called Omnibus Bill) passed the House on October 4 and is now being considered by the Senate Veterans Affairs Committee. A provision of this bill would liberalize admission rules for VA outpatient care by authorizing outpatient treatment for non-service-connected veterans. Care would be permitted if treatment is necessary for hospital admission or where such care is reasonably necessary to prevent hospitalization.

Another provision of this bill would extend medical benefits to wives and children of veterans permanently and totally disabled from service-connected causes and to surviving widows and children of men who died from similar causes. An estimated 464,000 wives and children would be eligible for VA care.

These two provisions would remove some current limitations which have prevented us from becoming a comprehensive health care system and would enable us to develop the only three major services the VA now lacks—obstetrics, gynecology, and pediatrics.

These liberalizations of the VA medical care program would be accompanied by serious but not insurmountable difficulties, such as the necessity for updating facilities to meet new requirements and the realignment and integration of working relationships among inpatient and outpatient staffs.

I have tried in this article to show that the VA Department of Medicine and Surgery, which comprises the nation's largest health care system, is far from static. We constantly seek to prepare for not only the future needs

of our veteran patients, but to prepare for the future that may well include legislation changing the country's health care delivery systems. The challenge of relevancy to which I referred at the outset is exciting; it is one the department can meet and solve for not only its own patients, but in the interest of all Americans.

HIGH MEAT PRICES

Mr. HUGHES. Mr. President, I have been profoundly disturbed by recent ads in the Washington newspapers that add to the already considerable confusion and anxiety in the public mind about high meat prices.

Beef is near the highest level since the end of the Korean war.

One full page ad of a supermarket chain reads:

Why are they so high? It begins at the source: Livestock prices were not and are not now controlled under the present economic program. Less meat is reaching the market. Prices from our suppliers have skyrocketed. Because of all of these reasons, you will find higher prices on almost all fresh meats.

The implication of that one phrase—"it begins at the source"—as interpreted by the public is that the farmers, the livestock producers, are the beneficiaries of excessive prices for their products that are driving the consumers to the wall.

Nothing could be further from the truth. For the first time in years, the livestock producer is getting a price for some of his products that enable him to make a reasonable profit. But the prices he is getting are by no means excessive and are not, by any stretch of the imagination, the cause of the big bulge in prices at the supermarket. The real cause of high prices falls within the spread between what the farmer gets for his product and what the processed food sells for on the meat counter. For every cent the farmer gets, someone else along the line gets 5 cents or more.

In the meantime, lost in the shuffle is the fact that corn is selling at barely the cost of production—thereby reducing the total agricultural income of the farm belt. Lost in the shuffle is the mention of any price controls for the middleman, such as the processor. Lost in the shuffle is the fact that the annual per capita consumption of beef has increased from 62.2 pounds in 1952 to 114.5 pounds today. Lost in the shuffle is the fact that American consumers are demanding and getting ever fancier processing and packaging for their meat products—and these things cost money.

The administration appears to be working both sides of the street vis-a-vis relationships between the farmer and the consumer. On the one hand, Secretary Butz, with the zealotry of one who has just recently got religion, is loudly advertising and bragging about the prices livestock producers are getting. On the other hand, Mr. Grayson, head of the Price Commission, is criticizing Mr. Butz and suggesting that action should be taken to control the prices of raw agricultural products.

Actually, it is the farmer and the consumer both who are getting the shaft and it is a divisive disservice to the en-

tire country that the farmer is being made the fall guy and consumer resentment is being stirred up against him. The irony of it all is that the country has become accustomed to seeing food furnished by the farmer at the cost of production, or less, while others reap the high profits.

So the answer is not punitive action against the farmer, such as imposing a ceiling on raw agricultural products. Let the Price Commission, if they really want to protect the consumer, look to where the real profits are in the meat-to-market cycle.

The American consumer should know that the prices farmers and cattle feeders are getting these days are about what they were 20 years ago.

What other categories of producers can say the same? What other citizen would settle for the wages he was getting two decades ago?

INEFFICIENCY OF GIANT U.S. FIRMS

Mr. HARRIS. Mr. President, one of the contentions of those who support a vigorous antitrust policy by the Federal Government is that too many giant U.S. firms are too large to be efficient. They are like whales in shallow water. Still able to breathe, they are unable to maneuver like their smaller rivals.

On March 12, 1972, the New York Times published an article by John Bunting, chairman of the First Pennsylvania Banking & Trust Co., who agrees that corporate structure in this country is too topheavy. As Mr. Bunting states:

The very size of many companies precludes any accurate evaluation of the efficiency of their individual parts or the contributions of their individual managers. Indeed the swollen structure of most corporations today argues against efficiency. It is easy to hide the operating inadequacies of one division in the total corporate structure. In fact, modern accounting practices often encourage management to tolerate a poor performance by one part of the corporation for tax purposes.

Mr. Bunting himself does not favor antitrust actions by the Federal Government as a solution. He argues at this point for voluntary decisions by large corporations to "break themselves up into smaller, relatively autonomous segments." He also is more sanguine than many including myself about the merits of conglomerates.

Nevertheless, his views are of great interest. Here is a man who spends his life evaluating the efficiency of corporations as part of his job as a banker and who has concluded that too many are bloated, topheavy and inefficient.

Mr. President, I ask unanimous consent that Mr. Bunting's thoughtful article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CORPORATE STRUCTURE REQUIRES RADICAL CHANGES

(By John Bunting)

Much has been said and written about President Nixon's new economic policies during the past few months. While establishing

price and wage controls, seeking new tax reform and realigning world currency values are all important steps in establishing a kind of new economic ball game for the country, one key player is still missing from the roster: corporate management.

At a time when corporations have a responsibility to make a still greater contribution to the economy and society, they seem less prepared—financially and psychologically—than ever before to meet the challenges of the next decade. At a time when there is increasing pressure on labor to become more productive, no one has really pointed a finger at management and demanded that it become more efficient.

The sad but simple truth is that most corporate managements are anachronistic, self-serving and sorry in need of radical restructuring. It's not a question of management marching to a different drum but of being out of step with the times.

In the past, the United States usually has had self-correcting devices built into its economy that forced management to be efficient. These "devices" took the form of severe recessions or depressions, which, in a kind of fiduciary Darwinism, weeded out the weak, purified corporate bureaucracies and permitted only the superefficient to survive. With all the terrible consequences of the Great Depression, the one good thing was that it knocked everybody down and made everybody equal for a while before the efficient grew up again.

Today, we have decided that severe recessions or depressions are against the law. While I am advocating the return of such severe economic dislocations, it is important to understand that as a nation we really haven't found a substitute for the one benign consequence of depressions and recessions: the restructuring of management.

In fact, the nature of the times seems intent on maintaining the status quo of helping the weak, poorly managed or mismanaged company survive—while discouraging practices that in the end might lead to stronger corporate management. Indeed, there is something to the notion that weak managements are overprotected in the United States, as so dramatically illustrated by the Government's rescue of the Lockheed Aircraft Corporation.

More than that, some corporate management teams apparently look upon growth and size as a magic cure-all to inefficiency. The Penn Central situation is a good illustration.

It is equally important to note that the frequent incremental cost-cuttings instituted by management during slow business periods such as we have just experienced are, in effect, little more than fiscal tokenism designed to placate shareholders and reinforce the management team that undertook them in the first place. These cost-cuttings are extremely temporary, often insignificant and usually made within the framework of the existing management structure.

What, then, can be done to make corporations more efficient, short of a major recession or depression? How can management be made more aware of its important role in the revitalization of the nation's economy and meet its social responsibilities at the same time?

One thing that would greatly help would be a "fracturing" of corporations into more manageable pieces. By this, I don't mean that the Government should step in and break up large corporations, such as General Motors, A.T.&A. or I.B.M.; rather that corporation should break themselves up into smaller, relatively autonomous segments.

The very size of many companies precludes any accurate evaluation of the efficiency of their individual parts of the con-

tributions of their individual managers. Indeed, the swollen structure of most corporations today argues against efficiency. It is easy to hide the operating inadequacies of one division in the total corporate structure. In fact, modern accounting practices often encourage management to tolerate a poor performance by one part of the corporation for tax purposes.

How can a shareholder of a huge corporation judge the value of separate divisions to the corporate whole when the results of each are hidden in a consolidated balance sheet? What incentive is there for the manager of one major division to be more efficient or more innovative than the manager of another when the efforts of each are sheltered by the total corporate entity? However, if a division were spun off and made a corporation with its own president and board of directors and its own profit-and-loss statement, the fresh air of such public exposure would force management to become more efficient, more competitive. And both the economy and the public would benefit in the end.

Hand in hand with corporate fracturing would be less interference by the Securities and Exchange Commission, the Federal Reserve and other Government agencies in corporate takeover actions. Not only does the Government seem to protect inefficient corporations by compensatory policies that tend to prevent bankruptcies, but efficient management is often restrained from taking steps or making acquisitions or mergers that could help the economy.

Able management, with a proven record of constructive growth and corporate efficiency, should be given greater latitude in making acquisitions. New policies are needed to permit the better managed, faster growing, more capable corporations to take over or eliminate the less able corporations that are wasting their (and the country's) resources. In other words, weak management shouldn't be protected against the "raid" by outsiders.

In this respect, many of our so-called conglomerates have been much maligned. As was noted earlier, merger for merger's sake is no answer to the problem of corporate efficiency, but there are sound economic arguments for advocating the diversification of large, well-financed, well-managed corporations into seemingly far-flung or distant fields.

Moving horizontally in the same industry is bad. When one steel company buys another steel company, it's usually bad for industry, since it reduces competition, and it's bad for the country, since it tends toward economic concentration. But when an I.T.T. diversifies into parking lots or housing, we achieve a kind of corporate integration that fits in with the economic needs of the country. We want insulation against recessions and we need corporations that are broad-based enough to live through a down year without going out of business and adding to the nation's unemployment rolls.

A conglomerate may have to cut back but it won't be forced to shut down. When one part of the conglomerate is suffering, other parts may be thriving, which gives management a kind of balance it would not have if its affiliated parts were separate, independent companies. The total corporation may still show a profit despite the poor performance of one member. At the same time, the shortcomings of the latter will be readily visible.

For example, if First Pennsylvania were engaged only in commercial banking, we would have shown only marginally higher profits last year due to declining interest rates. But because we also owned two consumer finance companies, a mortgage company, an adviser to the investment trust and a few other subsidiaries that did well, we

were able to substantially increase the earnings of the total corporation.

Still another change that might increase managerial efficiency would be the overhaul of the corporate board of directors. The No. 1 job of a board of directors is to evaluate management. But, in most cases, the boards are composed of cronies or business associates of management who do little more than rubber-stamp management's policies.

In other words, most boards of directors represent and reaffirm the corporate "establishment." If management is out of tune with what's going on in society, so undoubtedly will be the board. This is why it is crucial for corporations today to restructure their boards to include not only the usual type but also representatives from outside the business sphere, such as consumer, environmental or racial minority groups.

Finally, in keeping with the above, companies obviously need to take a fresh look at their own public relations. Because it has been overprotected—insulated from the pressing need to change—management is out of touch with the mood of the times.

In the area of environmental protection, for example, companies are always complaining about the cost of antipollution measures. It might be better if these companies would accent the positive by taking the attitude that these changes are good. Instead of waiting for pressure from government and environmental groups, management should take the initiative in finding ways to restore an ecological balance, and maximize the advantages of pollution control. Since the public wants companies to do these things anyway, they might as well make a business—and a profit—out of it, and stop complaining about what it will cost them.

But more important, until management undertakes the kind of reforms needed to increase its efficiency and make it an active player in the new economic ball game now under way in the nation, it will remain unresponsive and unable to meet its growing social commitments. The time for change is now.

EROSION OF THE WORK ETHIC

Mr. FANNIN. Mr. President, our Nation faces some tough economic problems these days. Foreign goods are pouring into America; U.S. factories are stagnating or moving abroad.

Consumers who very justifiably want the most for their dollar are passing up high-priced American-made goods to purchase the less expensive foreign-made goods.

One of the main reasons for this is the fact that too many American workers are getting paid more and more for doing less and less. Unions have sought to convince workers that their main objective in life is not to produce products or services, but to wring as much as possible out of employers. Employers do as employers must—they pass the additional cost of goods on to the purchaser. The prices go up, the workers want more to offset the inflation, and prices go up again.

Meanwhile, in Japan, in Taiwan, in Korea, in Hong Kong, the world's top manufacturers—including American manufacturers—are finding willing workers who will produce much for relatively little in wages. These workers have energy, desire, and appreciation for their jobs.

I am not suggesting that American workers could or should accept what foreign workers get. We have a technology

that allows us to produce more—that is, providing our workers will put forth a fair day's work for a fair wage, and providing our plants are allowed to fully utilize the technology as it is developed.

If we are to survive as a leading manufacturing nation, we must have a return of what once was known as the work ethic.

American workmen must once again take pride in being the best—rather than just the best paid—in the world. Our union leaders must start acknowledging the realities of economics. Workers must be allowed to produce, they must be encouraged to produce.

Mr. President, last Tuesday columnist James J. Kilpatrick provided us with some good insight in the problem. I ask unanimous consent that his column, published in the Washington Evening Star, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EROSION OF WORK ETHICS IS LAMENTED BY BUILDER

(By James J. Kilpatrick)

HOUSTON.—John E. Healy II spoke at more than 200 meetings last year—industry meetings, union meetings, committee meetings—and at many of them he told the story of the Empire State Building. The story takes only a few paragraphs, but it packs a wallop.

Healy is the handsome, hefty, third-generation builder from Wilmington, Del., who is the outgoing president of the Associated General Contractors of America. The association met here last week in its fifty-third annual convention. The 5,000 delegates went home with a renewed determination to restore some sense to their deeply troubled industry and they took with them the story of the Empire State.

The world's greatest skyscraper broke ground on Jan. 22, 1930. At peak employment, 3,400 men were working to erect 60,000 tons of steel, to lay 10 million bricks, to install 70 miles of water piping, and to connect 3,500 miles of telephone cable. The 102 stories went up at an average of four-and-a-half stories per week. On May 1, 1931, just one year and 98 days later, President Hoover dedicated the building and tenants moved in.

The same structure today, says Healy, would require three to three-and-a-half years to complete.

Granted, the Empire State Building lacked air conditioning, which a contemporary building would demand, but the man-hours required to install air conditioning have been more than offset by the new tools and new techniques of the past 40 years. The grim truth, in Healy's view, is that productivity in the building industry today is less than half what it was then. And why? "The work ethic has been lost."

It has been lost, he believes, through the power of avaricious trade unions, and through the weakness of contractors willing to buy labor peace at any price. The process has grossly inflated building costs, and it has sadly diminished the dignity of working men.

Members of the AGC are eager to have their troubles known. Day in and day out, their experience confirms the picture painted in a hard-hitting report last month by Engineering News-Record. In 1926, a Chicago mason laid 600 blocks a day; today two masons are required for the same work, and they lay 100 blocks a day. In the days when concrete was finished by hand, a contractor

figured on 2,000 square feet of finished concrete per man per day; today, with all kinds of power tools, the rate is 600 square feet.

The magazine cited the sorry example of a power plant job that required several small gasoline-powered generators. The unions successfully demanded that each generator be watched by an operating engineer, an electrician, and a pipefitter. The operating engineer got \$300 to \$400 a week "for starting once or twice a day a gas engine smaller than those on many home lawn mowers."

Each electrician received the same kind of money "for pushing the wire plugs into the sockets of the machine whenever they were moved." The contractor said he never did discover what the pipefitter did.

Such examples are legion. A billion-dollar project in Albany has suffered repeated delays because of a dispute between teamsters and operating engineers: Who is to hold the nozzle of a fuel truck?

On a motel construction job in Philadelphia, electricians and carpenters quarreled over the installation of a chain-hung ceiling lamp.

Many labor leaders privately agree that this nonsense has to stop. Union members themselves are suffering, as many contractors turn to the open shop. Jobs are vanishing.

The contractors who met here in Houston gave Healy an ovation when he insisted that with the union's help, "or without it," productivity and morale must be restored. If the builders will match their convention zeal with hometown determination, the old concept of a fair day's work for a fair day's pay may yet be revived. It's what the unions have been asking all along.

LT. GOV. HENRY HOWELL, OF VIRGINIA

Mr. HARRIS. Mr. President, I invite attention to an article about Virginia's Lt. Gov. Henry Howell, published in this Monday's Washington Post. Lieutenant Governor Howell is a people's politician in the best tradition of Southern populism. The Post article describes his fight against unfair utility rate increases, his effort to repeal the State's sales tax on food and medicine, and his nearly successful campaign to stop the State tax code's preferential treatment of capital gains. The newspaper quotes Lieutenant Governor Howell as commenting on the latter: "This is no tax loophole. It is a major excavation."

Mr. President, I believe that Henry Howell is one of the leading voices for the new populism in the Democratic Party today. I expect we will be hearing a great deal more from him in the future. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A "MATURED" HOWELL: MAN TO WATCH FOR 1973

"I'm quite capable of having a lovely tea and making polite conversation. My wife, Betty, will have string ensembles and flowers in the executive mansion. As governor, I will be as genteel as a dancer of an 18th century minuet."

—Henry Howell, Aug. 12, 1969.

(By Carl Bernstein)

RICHMOND.—On the final day of the 1972 General Assembly, Gov. Linwood Holton turned to Betty Howell, wife of Virginia's independent, populist lieutenant governor. Half seriously, the Republican governor

asked Mrs. Howell her plans for redecorating the executive mansion when his own term expires in January 1974.

The gubernatorial election campaign of 1973 is still a long way off, but Henry Howell—as evidenced by the governor's question—is very much the man to watch as the state's Republicans and Democrats try to derail his plans for succeeding Holton.

Once widely regarded as the enfant terrible of Virginia's Democratic Party, Howell has emerged from his first legislative session as lieutenant governor with new-found respect. "Maturity" is the word heard most often to describe Howell's supposed transformation, and favorable comments are coming from many quarters:

From his colleagues in the state Senate, over which Howell presided for eight weeks with a fairness acknowledged from both sides of the aisle.

From the state's press, which expended almost as many column inches on the lieutenant governor as the governor during the General Assembly.

From his constituents, who came to the Capitol to lobby for his programs and for whom he lobbied.

And, significantly, from his political enemies, who are legion.

Even House Majority Leader James M. Thomson of Alexandria, an avowed segregationist who regards Howell as something of a dangerous radical, rose on the floor one day to give the 51-year-old lieutenant governor some backhanded praise. The occasion was a debate on Gov. Holton's proposal to create an executive cabinet of six administrative secretaries.

"Henry won't need this reorganization," shouted Thomson, the brother-in-law of U.S. Sen. Harry F. Byrd Jr. "When Henry gets to be governor he'll do the job without all those secretaries and assistant governors because Henry Howell—unlike most people around here—knows how to get things done."

Later, Thomson remarked: "I suppose we might have to live with him as governor for four years. We can do it. The legislature will be here longer than Henry will and we're not about to give him the legislation he wants."

"But I've got to hand it to Henry," Thomson continued. "He's looking like a statesman. Henry's a real leader, which is something we've been a little short on in Richmond lately. The lieutenant governorship might not have much power, but Henry's been smart enough to make it powerful in spite of itself."

Howell came to the lieutenant governorship, his first statewide office after a dozen years in the Assembly, armed with little more than the 362,371 votes he received last Nov. 2 and his reputation.

A political iconoclast who had made a career of challenging the Byrd Machine's policy of appointment and appointment (Howell's phrase), he was an early leader in the consumerism fight; championed organized labor in a state that was among the first to adopt a right-to-work law; called for equal rights when Virginia was seized with the fervor of massive resistance to racial integration; alienated the state's bankers, insurance interests and utility companies by attacking their power and their rates, and parted with the state Democratic Party when it refused to hold a primary election for lieutenant governor in 1971.

The day after his election, Howell set about giving some power to the lieutenant governorship—an office that, by his own description, has traditionally meant "getting a gavel and lining up a preacher to give the Senate prayer and maybe a rabbi every now and then."

Holding a multicolored map of the election results in front of the television cameras. Howell said on Nov. 3: "Now all that

blue you see is Henry Howell country. I am sure that these great legislators, who are very skilled in the art of elections, are going to look at all these blue areas of the map when evaluating my legislative program"—the first, he noted, ever submitted by a lieutenant governor.

Howell would establish a "People's Lobby," he said at that first press conference, to come to Richmond and buttonhole legislators on behalf of his key proposals. He would keep in touch with his unlikely constituency—senior citizens, blacks, Wallacites, liberals, state civil servants, union members and small businessmen—by turning his office into something akin to Andrew Jackson's White House, "with all the people invited into that little telephone booth they give the lieutenant governor for an office."

By the second week of the session, there was a steady stream of union members, state employees, teachers, welfare recipients, students, merchants and others in and out of Howell's office, sometimes keeping senators waiting.

"These people realize they are not being fairly treated by the government," says Howell. "They give me my ideas. Because of my record they see me as the best hope of getting heard, of getting the system back in balance."

In the fourth week of the session, a Howell-backed proposal to increase educational aid to the state's handicapped children came up for a public hearing. Busloads of parents of handicapped children—contacted earlier by Howell's office—began arriving at the Capitol in the early morning, so many that the hearing had to be held in the state government's biggest auditorium. At session's end, the bill had passed.

A week after the aid-to-the-handicapped hearing, hundreds of blue uniformed policemen and firemen recruited for the occasion by Howell roamed through the Capitol's halls, lobbying in support of another element of Howell's legislative program: compensation for the families of officers killed in the line of duty. That bill passed, too.

So did a bill backed by Howell that for the first time, Virginia employers were to establish private prepaid health care programs for their workers. ("You can't afford to be sick in this state," the lieutenant governor is fond of saying.)

However, Howell lost on other key elements of his legislative program; tax reform; wholesale reform of the powerful State Corporation Commission, which sets utility rates; elimination of trading stamps; an end to the state sales tax on food and non-prescription drugs, and enactment of a series of consumer bills.

On most of those issues, the lieutenant governor's "People's Lobby" was nowhere to be seen. "It takes a long time to thaw a watermelon if it's been frozen long enough," commented Howell.

"The people of Virginia are not used to being part of their government. Nobody's ever asked them to participate and the average citizen still is not willing to take part in his government. He's suspicious of it because he's been ignored for so long. That's what we're trying to change," he said.

One of the fights that Howell almost won—eliminating a capital gains income tax shelter—is indicative of how the lieutenant governor operates. A letter from Benjamin R. Moser of Vienna, one of the more than 300 Howell received each week from voters during the session, informed him of the situation and asked him to fight it.

The shelter results from the Virginia legislature's 1970 action passing a law that conforms Virginia's tax forms with the federal government, even though the state tax structure is not nearly so progressive as the federal model it conforms with.

Under that bill, Virginians pay state income taxes on only half the capital gains they realize from investments—such as stocks—held for more than six months. Howell said it will cost the state an estimated \$16 million a year.

The letter made Howell aware of the tax shelter, and within a week the capital gains tax question had become one of the most controversial in the legislature.

Howell first carried the message to some Knights of Columbus members in Woodbridge, one of the four or five speaking appearances he makes each week. "The Big Boys" are pocketing \$16 million a year "while the little old lady on social security pays a tax every time she puts jam on a piece of toast. This is no tax loophole," said Howell "It's a major excavation."

In the end, the tax-writing committees of the General Assembly refused by narrow votes to close the capital gains shelter. But the message had gotten across. "Henry," said one political opponent, "ought to pick up 20,000 votes on that alone. We'll never hear the end of it."

The lieutenant governor is probably the most able orator in Virginia politics, mixing his down-home analogies with the dialects of his personal brand of populism. He summons working class people of all races to join white-collar progressiveness and liberals in fighting "The Big Boys"—Howell's term for the state's big corporate interests and the old Democratic Party kingmakers. Opponents call him a demagogue.

The lieutenant governorship has given Howell constant exposure, from the daily civics lessons he gives to visitors in the Senate galleries, to his picture in *Fortune* magazine, to campaigning in Florida for his old friend Hubert Humphrey to mention in Jack Newfield's book on "The New Populism," to almost daily mention in the state's newspapers and on television.

It is this exposure that has particularly nettled Howell's political opponents, who fear he is riding a gravy train of free publicity to the governor's mansion, while the Democrats and the Republicans must wait another full year before even choosing their candidates.

"How to handle Henry" is a problem that the opponents concede has not been resolved to their satisfaction. Some moves against Howell:

The legislature refused his request for \$50,000 to run his office, so Howell continues to pay four aides out of his pocket and from leftover campaign funds.

The state's Democrats declined to invite the lieutenant governor, who describes himself as a "national Democrat" abandoned by the state party, to their Jefferson-Jackson Day dinner.

There have been speeches, including a couple on the Senate floor, attacking Howell's positions as improper for a ceremonial officer to undertake.

Several legislators researched the possibility of introducing a bill that would preclude Howell from seeking the governorship as an independent (impossible without a state constitutional amendment, they found).

Conservatives are thinking about running an independent candidate against Howell with the backing of both parties, thereby hoping to eliminate the three-way race possibility that was instrumental in giving Howell the lieutenant governorship.

Meanwhile, Henry Howell goes about his business as usual. In the Senate, he has initiated a legislative digest, published by his staff, that for the first time gives senators full descriptions of the bills they are voting on. He has won some fights in his once-lonely battle against the utility rates, and has been joined now by a growing Virginia consumer movement.

His years of criticism of the State Corporation Commission, which regulates virtually every aspect of corporate practice in Virginia, has now been echoed by dozens of legislators, putting heavy pressure on the SCC to pay greater heed to consumers.

Despite the political repercussions, Howell has remained steadfast in his refusal to condemn court-ordered busing to achieve racial integration, or to attack the controversial metropolitan Richmond school consolidation order of Judge Robert R. Merhige.

In his private life, Howell has remained as conservative as the politics of many of his opponents.

He reads when he gets the chance (mostly history and biography), spends available spare moments with his family, helps his secretary rehearse her speeches for the Order of the Eastern Star and—in contrast to his mood on the campaign trail—is quiet, almost shy, and deferential to visitors. But he is constant in his theme:

"The business of government, as George Mason said, is to produce 'that which is capable of producing the greatest degree of happiness and safety.' In this state we still haven't done it. The people have lost their faith in their government. We must bring them back into the political process. That's what I've always been about. That's why the politicians of the past oppose me.

"I'm going to try to win this governorship and that would conclude my contribution. I see that as the last chapter in my political book. After that I want to go to Europe—I've never had the time to travel—and spend time with my family."

THE BENEFITS OF SPACE WORK

Mr. GAMBRELL. Mr. President, many inquiries come to Members of Congress regarding the benefits of space work. Those of us who serve on committees dealing with NASA hear about many applications but they seldom get into the newspapers or on TV. One of the most interesting applications of space technology which is finding wide use is a NASA-developed computer program called NASTRAN—NASA's structural analysis computer program—used to solve structural engineering problems. This computer program is now being used in more than 185 different applications ranging from the design of suspension units and steering linkages on automobiles to the design of power plants and skyscrapers. Initially this program was developed to analyze the elastic behavior of structures in the space program and has been, is and will be used extensively in the design of the space shuttle. But this program is also applicable to the design of other structures and is now considered virtually indispensable by many structural and design engineers who estimate that two-thirds of the projects in which it has been applied would not have been attempted without it. NASA says that a survey of 23 users outside the Space Agency indicates that the assistance provided by this computer program has already saved the users \$2.5 million in costs. The program is distributed under contract by the Computer Software Management and Information Center located at the University of Georgia and purchases of the program have been made for an average cost of about \$1,700.

Mr. President, the computer program, NASTRAN, has proved to be one of the most important spinoff benefits from

the space program to date, but in addition to it, there are several hundred other computer programs available to the public through the Agency's technology utilization program for only modest charges. Information about these computer programs can be obtained from the Computer Software Management and Information Center, University of Georgia, Athens, Ga. 30601. The telephone number is 404-542-3256.

Mr. President, I ask unanimous consent that NASA News Release No. 72-40 on the NASA computer program, NASTRAN, be printed in the Record.

There being no objection, the release was ordered to be printed in the Record, as follows:

NASA COMPUTER PROGRAM AIDS AMERICAN DESIGNERS

More than 70 industrial firms, universities, laboratories and government agencies are now using NASTRAN, a NASA-developed computer program, to solve their structural engineering problems.

The program is presently being used in more than 185 different applications, ranging from suspension units and steering linkages on automobiles to the design of power plants and skyscrapers. At least 55 more uses of NASTRAN are currently planned.

NASTRAN (NASA's Structural Analysis Computer Program) is a general purpose digital computer program originally designed to analyze the behavior of elastic structures in the space program. One of its major uses by the National Aeronautics and Space Administration has been in the design of the Space Shuttle.

Since it was first made publicly available in November, 1970, more than 600 engineers have become acquainted with the use of NASTRAN. The computer program is now considered virtually indispensable by many structural and design engineers, who estimate that two-thirds of the projects in which it has been applied would not have been attempted without it.

Primary industrial users include aerospace companies, automobile manufacturers, consulting engineering firms and the construction industry.

Examples of their applications of NASTRAN include the design and analysis of:

- Aircraft fuselages, wings and tail assemblies;
- Automobile frames and other motor vehicle components;
- High speed railroad tracks;
- Turbine engines; and
- Space vehicles and related launch facilities.

The engineering division of a major automobile manufacturer using NASTRAN in the design of its 1973 line of light trucks reports a 60 percent improvement in predicting the behavior of components under stress and a time saving of two-thirds in achieving such calculations. Similar savings in time and effort have been reported by most industrial users.

Firms using the new analysis program predict many improvements in product safety, reliability and quality, as direct benefits to their customers.

NASA spent more than \$3 million to develop the program at the Goddard Space Flight Center. The Langley Research Center spends about \$400,000 annually to update the program for NASA uses and to help new users apply it and learn its possibilities. A survey of 23 users outside the Space Agency indicates that assistance provided by the Langley Center has already saved them more than \$2.5 million in start-up costs and other expenses associated with using the computer program.

The NASTRAN program is now being dis-

tributed under contract to NASA by the Computer Software Management and Information Center (COSMIC) at the University of Georgia. The program is user-oriented and organized to do much of its work automatically. Written in a versatile computer language, NASTRAN can be used on a variety of computers. A complete set of program tapes and documentation can be purchased through COSMIC for an average \$1,700, depending on the options required.

The program's capabilities include the analysis of: (a) static response to various loads, thermal expansion and deformation; (b) dynamic response to transient loads, harmonic loads and random stresses; and (c) solutions for vibration, dynamic stability and elastic stability analysis.

NASA-developed computer programs have proved one of the most important spinoff benefits from the space program. Besides NASTRAN, several hundred other programs are publicly available to United States users as part of the Space Agency's Technology Utilization Program. Only modest charges are made to meet the cost of evaluation, processing and distribution.

Further information on NASTRAN and other computer program tapes and documentation is available from NASA's Computer Software Management and Information Center (COSMIC), Barrow Hall, University of Georgia, Athens, Ga. 30601; telephone AC-404/542-3265.

Organizations reported as users of NASTRAN are:

- Aerojet Solid Propulsion Company, Sacramento, Calif.
- A. O. Smith Corporation, Milwaukee, Wisc.
- Argonne National Laboratory, Argonne, Ill.
- Atlantic Research Corporation, Costa Mesa, Calif.
- AVCO, Lycoming Division, Stratford, Conn.
- Bell Aerospace Company, Buffalo, N.Y.
- Bell Helicopter, Fort Worth, Tex.
- Bell Telephone Laboratory, Whippany, N.J.
- Boeing Aerospace Company, Seattle, Wash.
- Boeing Computer Service, Kent, Wash.
- CHI Corporation, Cleveland, Ohio.
- Computer Sciences Corporation, Richland, Wash.
- Computer Sciences Corporation, Los Angeles, Calif.
- COMSAT Laboratory, Clarksburg, Md.
- Control Data Corporation, Minneapolis, Minn.
- Control Data Corporation, Chicago, Ill.
- COSMIC, Athens, Ga.
- Eso Production and Research, Houston, Tex.
- Fairchild Industries, Germantown, Md.
- Ford Motor Company, Dearborn, Mich.
- Franklin Institute, Philadelphia, Pa.
- General Dynamics/Convair, Fort Worth, Tex.
- General Dynamics/Convair, San Diego, Calif.
- General Dynamics Corporation, Pomona, Calif.
- General Motors Research Laboratory, Warren, Mich.
- Georgia Institute of Technology, Atlanta, Ga.
- Goodyear Aerospace Corporation, Akron, O.
- B. F. Goodrich, Akron, O.
- Grumman Aerospace Company, Bethpage, N.Y.
- Hercules, Magna, Utah.
- Hercules, Cumberland, Md.
- Itex Corporation, Lexington, Mass.
- JET Propulsion Laboratory, Pasadena, Calif.
- Johns Hopkins University, Silver Spring, Md.
- Lockheed Georgia Company, Marietta, Ga.
- Lockheed California Company, Burbank, Calif.
- Louisiana Tech. University, Ruston, La.
- Los Alamos Scientific Laboratory, Los Alamos, N.M.
- LTV Aerospace Corporation, Dallas, Tex.

MacNeal-Schwendler, Hampton, Va.
 Martin-Marietta Corporation, Denver, Colo.
 McDonnell-Douglas Aircraft Corp., St. Louis, Mo.
 McDonnell-Douglas Automation Co., St. Louis, Mo.
 McDonnell Douglas, Huntington Beach, Calif.
 McDonnell Douglas, St. Louis, Mo.
 NASA Goddard, Greenbelt, Md.
 NASA Ames, Moffett Field, Calif.
 NASA Houston, Houston, Tex.
 NASA Lewis, Cleveland, O.
 NASA MFSC, Huntsville, Ala.
 NASA Kennedy, Cape Kennedy, Fla.
 NASA Langley, Langley, Va.
 Naval Air Development Center, Warminster, Pa.
 Naval Ship Research and Development Center, Washington, D.C.
 North American Rockwell Space Div., Downey, Calif.
 Northrop Services Incorporated, Huntsville, Ala.
 Old Dominion University, Norfolk, Va.
 Perkin Elmer Corporation, Danbury, Conn.
 Pioneer Services Incorporated, Chicago, Ill.
 Pratt & Whitney Aircraft, West Palm Beach, Fla.
 Raytheon Company, Sudbury, Mass.
 Research Analysis Corporation, McLean, Va.
 Sandia Laboratories, Albuquerque, N.M.
 SCI-Tech., Wilmington, Del.
 Sperry Rand, Huntsville, Ala.
 Structural Dynamics Research Corp., Cincinnati, O.
 Teledyne Brown, Huntsville, Ala.
 Teledyne Ryan, San Diego, Calif.
 Teledyne Computer Center, Toledo, O.
 Texas Instruments, Dallas, Tex.
 TRW Systems, Redondo Beach, Calif.
 United Aircraft Sikorsky Division, Stratford, Conn.
 Watervliet Arsenal, Watervliet, N.Y.
 Westenhoff & Novick, Chicago, Ill.
 Westinghouse Telecomputer, Pittsburgh, Pa.
 Westinghouse Defense and Space Center, Baltimore, Md.
 Westinghouse, Research and Development Center, Pittsburgh, Pa.

STATEMENT ON HEALTH NEEDS

Mr. SPARKMAN. Mr. President, all over the country, in administration circles, in the Congress and among medical and hospital groups, there is a keen awareness of the desperate need for new types of medical personnel to deliver necessary medical services which we are unable to deliver under present conditions. The fact that we do not have enough doctors, enough nurses or medical personnel of other types to do the job we need is recognized by every person familiar with today's health and hospitalization problems.

Equally well known is the impossibility of training new doctors and new nurses fast enough to keep pace with the increasing need.

One of the most promising approaches to meeting this pressing need for medical assistants has been going on in Alabama as a joint venture of the University of Alabama, in Birmingham, and Calhoun Junior College. This program was designed to train and place workers in allied health fields. The training is being given at UAB's School of Community and Allied Health Resources.

Now this whole program which would have been turning out allied health workers, X-ray technicians, inhalation thera-

pists, medical laboratory technicians, dental assistants, medical equipment repairmen, et cetera—all this is being slowed down, because adequate Federal assistance is not forthcoming. I am getting in touch with the Secretary of Health, Education, and Welfare today in an effort to get funds released to keep this program going. It is a pilot program which will be beneficial not only to Alabama and the Southeast, but throughout the Nation.

VOTER REGISTRATION

Mr. MCGEE. Mr. President, several days ago the Senate, by the narrow margin of 46 to 42, voted to table the national voter registration bill, S. 2574.

One feature of that bill which raised great controversy in the Senate was the provision limiting durational residency requirements for voting in Federal elections to the period established by the Voting Rights Amendments of 1970—effectively, a 30-day residency. Several opponents of the voter registration bill spoke at length about how this modern provision invaded the prerogatives of the sovereign States, was clearly unconstitutional, and would bring havoc to the election process.

Apparently the constitutional experts of the Senate failed to advise the Supreme Court of the United States. Yesterday, by a vote of 6 to 1, the two recently appointed Justices not participating, the Court ruled that durational residency requirements beyond 30 days are unconstitutional in any election—mind you, not just the election of Senators or Representatives, but any election. I ask unanimous consent that the opinion of the Court be printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

[Supreme Court of the United States]
 DUNN, GOVERNOR OF TENNESSEE, ET AL.
 AGAINST BLUMSTEIN

(Appeal from the U.S. District Court for the middle district of Tennessee)

No. 70-13. Argued November 16, 1971—Decided March 21, 1972.

Tennessee closes its registration books 30 days before an election, but requires residence in the State for one year and in the county for three months as prerequisites for registration to vote. Appellee challenged the constitutionality of the durational residence requirements, and a three-judge District Court held them unconstitutional on the grounds that they impermissibly interfered with the right to vote and created a "suspect" classification penalizing some Tennessee residents because of recent interstate movement. Tennessee asserts that the requirements are needed to insure the purity of the ballot box and to have knowledgeable voters. *Held*: The durational residence requirements are violative of the Equal Protection Clause of the Fourteenth Amendment, as they are not necessary to further a compelling state interest. Pp. 5-30.

(a) Since the requirements deny some citizens the right to vote, "the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer v. Union Free School District*, 395 U.S. 621, 627 (emphasis added). Pp. 6-7.

(b) Absent a compelling state interest, Tennessee may not burden the right to travel by penalizing those bona fide residents who

have recently traveled from one jurisdiction to another. Pp. 8-12.

(c) A period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and insure the purity of the ballot box. Pp. 15-19.

(d) Since there are adequate means of ascertaining bona fide residence on an individual basis, the State may not conclusively presume nonresidence from failure to satisfy the waiting period requirements of durational residency laws. Pp. 19-24.

(e) Tennessee has not established a sufficient relationship between its interest in an informed electorate and the fixed durational residence requirements. Pp. 24-30.

Affirmed.

MARSHALL, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, and WHITE, JJ., joined. BLACKMUN, J., filed an opinion concurring in the result. BURGER, C.J., filed a dissenting opinion. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

[Supreme Court of the United States, No. 70-13]

WINFIELD DUNN, GOVERNOR OF THE STATE OF TENNESSEE, ET AL., APPELLANTS, AGAINST JAMES F. BLUMSTEIN

On Appeal from the United States District Court for the Middle District of Tennessee, March 21, 1972.

Mr. JUSTICE MARSHALL delivered the opinion of the Court.

Various Tennessee public officials (hereinafter "Tennessee") appeal from a decision by a three-judge federal court holding that Tennessee's durational residence requirements for voting violate the Equal Protection Clause of the United States Constitution. The issue arises in a class action for declaratory and injunctive relief brought by appellee James Blumstein. Blumstein moved to Tennessee on June 12, 1970, to begin employment as an assistant professor of law at Vanderbilt University in Nashville. With an eye towards voting in the upcoming August and November elections, he attempted to register to vote on July 1, 1970. The county registrar refused to register him, on the ground that Tennessee law authorizes the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.

After exhausting state administrative remedies, Blumstein brought this action challenging these residence requirements on federal constitutional grounds.¹ A three-judge court, convened pursuant to 28 U.S.C. §§ 2281, 2284, concluded that Tennessee's durational residence requirements were unconstitutional (1) because they impermissibly interfered with the right to vote and (2) because they created a "suspect" classification penalizing some Tennessee residents because of recent interstate movement.²—F. Supp.—(MD Tenn. 1970). We noted probable jurisdiction, 401 U.S. 934 (1971). For the reasons which follow, we affirm the decision below.³

I

The subject of this lawsuit is the durational residence requirement. Appellee does not challenge Tennessee's power to restrict the vote to bona fide Tennessee residents. Nor has Tennessee ever disputed that appellee was a bona fide resident of the State and county when he attempted to register.⁴ But Tennessee insists that, in addition to being a resident, a would-be voter must have been a resident for a year in the State and three months in the county. It is this additional durational residence requirement which appellee challenges.

Durational residence laws penalize those

Footnotes at end of article.

persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote.⁵ The constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.

To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. Cf. *William v. Rhodes*, 393 U.S. 23, 30 (1968). In considering laws challenged under the Equal Protection Clause, this Court has evolved more than one test, depending upon the interests affected and the classification involved.⁶ First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classifications (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements.

A

Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of a "fundamental political right, . . . preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). There is no need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes which selectively distribute the franchise. In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. See, e.g., *Evans v. Cornman*, 398 U.S. 419, 421-422, 426 (1970); *Kramer v. Union Free School District*, 395 U.S. 621, 626-628 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 667 (1966); *Carrington v. Rash*, 380 U.S. 89, 93-94 (1965); *Reynolds v. Sims*, supra. This "equal right to vote," *Evans v. Cornman*, supra, 398 U.S., at 426, is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. See, e.g., *Carrington v. Rash*, supra, 380 U.S., at 91; *Oregon v. Mitchell*, 400 U.S. 112, 144 (opinion of JUSTICE DOUGLAS), 241 (opinion of JUSTICES BRENNAN, WHITE, and MARSHALL), 294 (opinion of JUSTICE STEWART, in which CHIEF JUSTICE BURGER and JUSTICE BLACKMUN joined). But, as a general matter, "before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests severed by it must meet close constitutional scrutiny." *Evans v. Cornman*, 398 U.S. 419, 422 (1970); see *Bullock v. Carter*, — U.S. — (1972) (slip op. 8-9).

Tennessee urges that this case is controlled by *Druedling v. Devlin*, 380 U.S. 125 (1965). *Druedling* was a decision upholding Maryland's duration residence requirements. The District Court tested those requirements by the equal protection standard applied to ordinary state regulations: whether the exclusions are reasonably related to a permissible state interest. 234 F. Supp. 721, 724-725 (Md. 1964). We summarily affirmed *per curiam* without the benefit of argument. But if it was not clear then, it is certainly clear now that a more exacting test is required

for any statute which "places a condition on the exercise of the right to vote." *Bullock v. Carter*, supra, — U.S. —. This development is the law culminated in *Kramer v. Union Free School District*, supra, 395 U.S. 621 (1969). There we canvassed in detail the reasons for strict review of statutes distributing the franchise, *id.*, at 626-630, noting *inter alia* that such statutes "constitute the foundation of our representative society." We concluded that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, "the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Id.*, at 627 (emphasis added); *Cipriano v. City of Houma*, 395 U.S. 701, 704 (1969); *City of Phoenix v. Kolodziefski*, 399 U.S. 204, 205, 209 (1970). Cf. *Harper v. Virginia State Board of Elections*, supra, 383 U.S., at 670. This is the test we apply here.⁷

B

This exacting test is appropriate for another reason, never considered on *Druedling*: Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

"[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 758 (1966). See *Passenger Cases*, 7 How. 283, 492 (1849) (Taney, C. J.); *Crandall v. Nevada*, 6 Wall. 35, 43-44 (1868); *Paul v. Virginia*, 8 Wall. 168, 180 (1869); *Edwards v. California*, 314 U.S. 160 (1941); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Shapiro v. Thompson*, 394 U.S. 618, 629-631, 634 (1969); *Oregon v. Mitchell*, 400 U.S. 112, 237 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.), 285-286 (opinion of STEWART, J., with whom BURGER, C. J., and BLACKMUN, J., joined). And it is clear that the freedom to travel includes the "freedom to enter and abide in any State in the Union." *Oregon v. Mitchell*, supra, 400 U.S., at 285 (opinion of STEWART, J., with whom BURGER, C. J., and BLACKMUN, J., joined). Obviously, durational residence laws single out the class of bona fide State and county residents who have recently exercised this constitutionally protected right, and penalize such travelers directly. We considered such a durational residence requirement in *Shapiro v. Thompson*, supra, where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits. Although in *Shapiro* we specifically did not decide whether durational residence requirements could be used to determine voting eligibility, *id.*, at 638 n. 21, we concluded that since the right to travel was a constitutionally protected right, "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling state interest, is unconstitutional." *Id.*, at 634. This compelling state interest test was also adopted in the separate concurrence of Mr. JUSTICE STEWART. Preceded by a long line of cases recognizing the constitutional right to travel, and repeatedly reaffirmed in the face of attempts to disregard it, see *Wyman v. Owens*, 397 U.S. 49 (1970), and *Wyman v. Lopez*, — U.S. — (Jan. 24, 1972), *Shapiro* and the compelling state interest test it articulates control this case.

Tennessee attempts to distinguish *Shapiro* by urging that "the vice of the welfare statute in *Shapiro* . . . was its objective to deter interstate travel." Brief, at 13. In Tennessee's view, the compelling state interest test is appropriate only where there is "some evidence to indicate a deterrence of or infringement on the right to travel. . . ." *Ibid.* Thus,

Tennessee seeks to avoid the clear command of *Shapiro* by arguing that durational residence requirements for voting neither seek to deter travel nor actually do deter such travel. In essence, Tennessee argues that the right to travel is not abridged here in any constitutionally relevant sense.

This view represents a fundamental misunderstanding of the law.⁸ It is irrelevant whether disenfranchisement or denial of welfare is the more potential deterrent to travel. *Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other "right to travel" cases in this Court always relied on the presence of actual deterrence.⁹ In *Shapiro* we explicitly stated that the compelling state interest test would be triggered by "any classification which served to penalize the exercise of that right [to travel] . . ." *Id.*, at 634 (emphasis added); see *id.*, at 638 n. 21. While noting the frank legislative purpose to deter migration by the poor, and speculating that "an indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk" the loss of benefits, *id.*, at 628-629, the majority found no need to dispute the "evidence that few welfare recipients have in fact been deterred [from moving] by residence requirements." *Id.*, at 650 (Warren, C. J., dissenting); see also *id.*, at 671-672 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred.¹⁰ Only last Term, it was specifically noted that because a durational residence requirement for voting "operate to penalize those persons, and only those persons, who have exercised their constitutional right of interstate migration . . . [it] may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial government interest." *Oregon v. Mitchell*, 400 U.S. 112, 238 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.) (emphasis added).

Of course it is true that the two individual interests affected by Tennessee's durational residence requirements are affected in different ways. Travel is permitted, but only at a price; voting is prohibited. The right to travel is merely penalized, while the right to vote is absolutely denied. But these differences are irrelevant for present purposes. *Shapiro* implicitly realized what this Court has made explicit elsewhere:

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied'. . . ." *Harman v. Forssentius*, 380 U.S. 528, 540-541 (1965).¹¹

See also *Garrity v. New Jersey*, 385 U.S. 493 (1967), and cases cited therein; *Spevack v. Klein*, 385 U.S. 511, 515 (1967). The right to travel is "an unconditional personal right," a right whose exercise may not be conditioned. *Shapiro v. Thompson*, supra, 394 U.S., at 643 (opinion of JUSTICE STEWART); *Oregon v. Mitchell*, supra, 400 U.S., at 292 (opinion of JUSTICE STEWART, in which CHIEF JUSTICE BURGER and JUSTICE BLACKMUN joined). Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right.¹² In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote. Cf. *United States v. Jackson*, 390 U.S. 582-583 (1968). Absent a compelling state interest, a State may not burden the right to travel in this way.¹³

C

In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are "necessary to promote a compelling government-

Footnotes at end of article.

tal interest." *Shapiro v. Thompson*, *supra*, 394 U.S. at 634 (emphasis added); *Kramer v. Union Free School District*, *supra*, 395 U.S. at 627. Thus phrased, the constitutional question may sound like a mathematical formula. But legal "tests" do not have the precision of mathematical formulas. The key words emphasize a matter of degree: that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes.

It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with "precision," *NAACP v. Button*, 371 U.S. 419, 438 (1963); *United States v. Robel*, 389 U.S. 258, 265 (1967), and must be "tailored" to serve their legitimate objectives *Shapiro v. Thompson*, *supra*, 394 U.S. at 631. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

III

We turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. *E.g., Evans v. Cornman*, *supra*, 398 U.S. at 422; *Kramer v. Union Free School District*, *supra*, 395 U.S. at 625; *Carrington v. Rash*, *supra*, 380 U.S. at 91; *Pope v. Williams*, 193 U.S. 621 (1904).¹⁴ An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.¹⁵ But durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. *Cf. Shapiro v. Thompson*, *supra*, 394 U.S. at 636.

It is worth noting at the outset that Congress has, in a somewhat different context, addressed the question whether durational residence laws further compelling state interests. In § 202 of the 1970 Federal Voting Rights Act, Congress outlawed state durational residence requirements for presidential elections, and prohibited the States from closing registration more than 30 days before such elections. 42 U.S.C. § 1973aa-1. In doing so, it made a specific finding that durational residence requirements and more restrictive registration practices do "not bear a reasonable relationship to any compelling state interest in the conduct of presidential elections." 42 U.S.C. § 1973aa-1(a)(6). We upheld this portion of the Federal Voting Rights Act in *Oregon v. Mitchell*, 400 U.S. 112 (1971). In our present case, of course, we deal with congressional, state, and local elections, in which the State's interests are arguably somewhat different; and, in addition, our function is not merely to determine whether there was a reasonable basis for Congress' findings. However, the congressional finding which forms the basis for the Federal Act is a useful background for the discussion which follows.

Tennessee tenders "two basic purposes" served by its durational residence requirements:

"(1) Insure purity of ballot box—Protec-

tion against fraud through colonization and inability to identify persons offering to vote, and

"(2) Knowledgeable voter—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is therefore, more likely to exercise his right more intelligently." Appellants' Brief, p. 15, citing 18 Am. Jur., Elections, p. 217.

We consider each in turn.

A

Preservation of the "purity of the ballot box" is a formidable sounding state interest. The impurities feared, variously called "dual voting" and "colonization," all involve voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal. But it is impossible to view durational residence requirements as necessary to achieve that state interest.

Preventing fraud, the asserted evil which justifies state lawmaking, means keeping nonresidents from voting. But, by definition, a durational residence law bars newly arrived residents from the franchise along with non-residents. The State argues that such sweeping laws are necessary to prevent fraud because they are needed to identify bona fide residents. This contention is particularly unconvincing in light of Tennessee's total statutory scheme for regulating the franchise.

Durational residence laws may once have been necessary to prevent a fraudulent evasion of state voter standards, but today in Tennessee, as in most other States,¹⁶ this purpose is served by a system of voter registration. Tenn. Code Ann. §§ 2-301 et seq.; see *State v. Weaver*, 122 S.W. 465 (1909). Given this system, the record is totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents. The qualifications of the would-be voter in Tennessee are determined when he registers to vote, which he may do until 30 days before the election. Tenn. Code Ann. § 2-304. His qualifications—including bona fide residence—are established then by oath. Tenn. Code Ann. § 2-309. There is no indication in the record that Tennessee routinely goes behind the would-be voter's oath to determine his qualifications. Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications like durational residence requirements cannot prevent corrupt nonresidents from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a resident. Indeed, the durational residence requirement becomes an effective voting obstacle only to residents who tell the truth and have no fraudulent purposes.

Moreover, to the extent that the State makes an enforcement effort after the oath is sworn, it is not clear what role the durational residence requirement could play in protecting fraud. The State closes the registration books 30 days before an election to give officials an opportunity to prepare for the election. Before the books close, anyone may register who claims that he will meet the durational residence requirement at the time of the next election. Although Tennessee argues that this 30-day period between registration and election does not give the

State enough time to verify this claim of bona fide residence, we do not see the relevance of that position to this case. As long as the State permits registration up to 30 days before an election, a lengthy durational residence requirement does not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident.

Even if durational residence requirements imposed, in practice, a pre-election waiting period which gave voting officials three months or a year in which to confirm the bona fides of residence, Tennessee would not have demonstrated that these waiting periods were necessary. At the outset, the State is faced with the fact that it must defend two separate waiting periods of different lengths. It is impossible to see how both could be "necessary" to fulfill the pertinent state objective. If the State has itself determined that a three-month period is enough time in which to confirm bona fide residence in the State and county, obviously a one year period cannot also be justified as "necessary" to achieve the same purpose.¹⁷ Beyond that, the job of detecting nonresidents from among persons who have registered is a relatively simple one. It hardly justifies prohibiting all newcomers from voting for even three months. To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions. See Note, Residence Requirements for Voting in Presidential Elections, 37 U. Chi. L. Rev. 359, 364 and n. 34, 374; *cf. Shapiro v. Thompson*, *supra*, 394 U.S. at 637. Objective information tendered as relevant to the question of bona fide residence under Tennessee law—places of dwelling occupation, car registration, driver's license, property owned, etc.¹⁸—is easy to double check, especially in light of modern communications. Tennessee itself concedes that "[i]t might well be that these purposes can be achieved under requirements of shorter duration than that imposed by the State of Tennessee. . . ." Appellants' Brief, p. 10. Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much. This was the judgment of Congress in the context of presidential elections.¹⁹ And, on the basis of the statutory scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. As the court below concluded, the cutoff point for registration 30 days before an election—

"Reflects the judgment of the Tennessee legislature that thirty days is an adequate period in which Tennessee's election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting."—F. Supp.—(Appendix, pp. 48-49).

It has been argued that durational residence requirements are permissible because a person who has satisfied the waiting period requirements is conclusively presumed to be a bona fide resident. In other words, durational residence requirements are justified because they create an administratively useful conclusive presumption that recent arrivals are not residents and are therefore properly barred from the franchise.²⁰ This presumption, so the argument runs, also prevents fraud, for few candidates will be able to induce migration for the purpose of voting if fraudulent voters are required to remain in the false locale for three months or a year in order to vote on election day.²¹

In *Carrington v. Rash*, *supra*, 380 U.S. 89, this Court considered and rejected a similar kind of argument in support of a similar kind of conclusive presumption. There, the

State argued that it was difficult to tell whether persons moving to Texas while in the military service were in fact bona fide residents. Thus, the State said, the administrative convenience of avoiding difficult factual determinations justified a blanket exclusion of all servicemen stationed in Texas. The presumption created there was conclusive—"Incapable of being overcome by proof of the most positive character." *Id.*, at 96, citing *Heiner v. Donnan*, 285 U.S. 312, 324 (1932). The Court rejected this "conclusive presumption" approach as violative of the Equal Protection Clause. While many servicemen in Texas were not bona fide residents, and therefore properly ineligible to vote, many servicemen clearly were bona fide residents. Since "more precise tests" were available "to winnow successfully from the ranks . . . those whose residence in the State is bona fide," conclusive presumptions were impermissible in light of the individual interests affected. *Id.*, at 95. "States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State." *Id.*, at 96.

Carrington sufficiently disposes of this defense of durational residence requirements. The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification which may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the state's legitimate purpose and the individual interests which are affected, the classification is all too imprecise. See p. 13, *supra*. In general, it is not difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. Tennessee has defined a test for bona fide residence, and appears prepared to apply it on an individualized basis in various legal contexts.²² That test could easily be applied to new arrivals. Furthermore, if it is unlikely that would-be fraudulent voters would remain in a false locale for the lengthy period imposed by durational residence requirements, it is just as unlikely that they would collect such objective indicia of bona fide residence as a dwelling, car registration, or driver's license. In spite of these things, the question of bona fide residence is settled for new arrivals by conclusive presumption, not by individualized inquiry. Cf. *Carrington v. Rash*, *supra*, 380 U.S., at 95-96. Thus, it has always been undisputed that appellee Blumstein is himself a bona fide resident of Tennessee within the ordinary state definition of residence. But since Tennessee's presumption from failure to meet the durational residence requirements is conclusive, a showing of actual bona fide residence is irrelevant, even though such a showing would fully serve the State's purposes embodied in the presumption and would achieve those purposes with far less drastic impact on constitutionally protected interests.²³ The Equal Protection Clause places a limit on government by classification, and that limit has been exceeded here. Cf. *Shapiro v. Thompson*, *supra*, 394 U.S., at 636; *Harman v. Forstentius*, 380 U.S. 528, 542-543; *Carrington v. Rash*, *supra*, 380 U.S., at 95-96; *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

Our conclusion that the waiting period is not the least restrictive means necessary for preventing fraud is bolstered by the recognition that Tennessee has at its disposal a variety of criminal laws which are more than adequate to detect and deter whatever fraud may be feared.²⁴ At least six separate sections of the Tennessee Code define offenses to deal with voter fraud. For example, Tenn. Code Ann. § 2-324 makes it a crime "for any person to register or to have his name registered

as a qualified voter . . . when he is not entitled to be so registered . . . or to induce or procure any other person to register or be registered when such person is not legally qualified to be registered as such. . . ." In addition to the various criminal penalties, Tennessee permits the bona fides of a voter to be challenged on election day. Tenn. Code Ann. §§ 2-1309 *et seq.* Where a State has available such remedial action to supplement its voter registration system, it can hardly argue that broadly imposed political disabilities such as durational residence requirements are needed to deal with the evils of fraud. Now that the Federal Voting Rights Act abolishes those residence requirements as a precondition for voting in presidential and vice presidential elections, 42 U.S.C. § 1973aa-1, it is clear that the States will have to resort to other devices available to prevent nonresidents from voting. Especially since every State must live with this new federal statute, it is impossible to believe that durational residence requirements are necessary to meet the State's goal of stopping fraud.²⁵

B

The argument that durational residence requirements further the goal of having "knowledgeable voters" appears to involve three separate claims. The first is that such requirements "afford some surety that the voter has, in fact, become a member of the community." But here the State appears to confuse a bona fide residence requirement with a durational residence requirement. As already noted, a State does have an interest in limiting the franchise to bona fide members of the community. But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residence is questioned, but because they are recent rather than long-time residents.

The second branch of the "knowledgeable voters" justification is that durational residence requirements assure that the voter "has a common interest in all matters pertaining to [the community's] government. . . ." By this, presumably, the State means that it may require a period of residence sufficiently lengthy to impress upon its voters the local viewpoint. This is precisely the sort of argument this Court has repeatedly rejected. In *Carrington v. Rash*, for example, the State argued that military men newly moved into Texas might not have local interests sufficiently in mind, and therefore could be excluded from voting in state elections. This Court replied:

"But if they are in fact residents . . . they, as all other qualified residents, have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a section of the population because of the way they may vote is constitutionally impermissible." 380 U.S., at 94. See 42 U.S.C. § 1973aa-1(a) (4).

Similarly here, Tennessee's hopes for voters with a "common interest in all matters pertaining to [the community's] government" is impermissible.²⁷ To paraphrase what we said elsewhere, "All too often, lack of a ['common interest'] might mean no more than a different interest." *Evans v. Cornman*, 398 U.S. 419, 423. "Differences of opinion" may not be the basis for excluding any group or person from the franchise. *Ciprano v. City of Houma*, *supra*, 395 U.S., at 705-706. "The fact that newly arrived [Tennesseans] may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they come, is a constitutionally impermissible reason for depriving them of their chance to influence the electoral vote for their new home State." *Hall v. Beals*, 396 U.S. 45, 53-54 (1969) (dissenting opinion).²⁸

Finally, the State urges that a long-time resident is "more likely to exercise his right [to vote] more intelligently." To the extent that this is different from the previous argu-

ment, the State is apparently asserting an interest in limiting the franchise to voters who are minimally knowledgeable about the issues. In this case, Tennessee argues that people who have been in the State less than a year and the county less than three months are likely to be unaware of the issues involved in the congressional, state, and local elections, and therefore can be barred from the franchise. We note that the criterion of "intelligent" voting is an elusive one, and susceptible to abuse. But without deciding as a general matter the extent to which a State can bar less knowledgeable or intelligent citizens from the franchise, cf. *Evans v. Cornman*, *supra*, 398 U.S., at 422; *Kramer v. Union Free School District*, *supra*, 395 U.S., at 632; *Ciprano v. City of Houma*, *supra*, 395 U.S., at 705,²⁹ we conclude that durational residence requirements cannot be justified on this basis.

In *Kramer v. Union Free School District*, *supra*, 395 U.S. 621 (1969), we held that the Equal Protection Clause prohibited New York State from limiting the vote in school district elections to parents of school children and to property owners. The State claimed that since nonparents would be "less informed" about school affairs than parents, *id.*, at 631, the State could properly exclude the class of nonparents in order to limit the franchise to the more "interested" group of residents. We rejected that position, concluding that a "close scrutiny of [the classification] demonstrates that [it does] not accomplish this purpose with sufficient precision. . . ." *Id.*, at 632. That scrutiny revealed that the classification excluding nonparents from the franchise kept many persons from voting who were as substantially interested as those allowed to vote; given this, the classification was insufficiently "tailored" to achieve the articulated state goal. *Ibid.* See also *Ciprano v. City of Houma*, *supra*, 395 U.S., at 706.

Similarly, the durational residence requirements in this case founded because of their crudeness as a device for achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirements obviously permit any long-time resident to vote regardless of his knowledge of the issues—and obviously many long-time residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become minimally, and often fully, informed about the issues. Indeed, recent migrants who take the time to register and vote shortly after moving are likely to be those citizens, such as appellee, who make it a point to be informed and knowledgeable about the issues. Given modern communications, and given the clear indication that campaign spending and voters education occur largely during the month before an election,³⁰ the State cannot seriously maintain that it is "necessary" to reside for a year in the State and three months in the county in order to be minimally knowledgeable about congressional, state or even purely local elections. There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are uninformed about elections. Cf. *Shapiro v. Thompson*, *supra*, 394 U.S., at 631. These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeable participation.

It is pertinent to note that Tennessee has never made an attempt to further its alleged interest in an informed electorate in a universally applicable way. Knowledge or competence has never been a criterion for participation in Tennessee's electoral process for

Footnotes at end of article.

long-time residents. Indeed, the State specifically provides for voting by various types of absentee persons.²¹ These provisions permit many long-time residents who leave the county or State to participate in a constituency in which they have only the slightest political interest, and from whose political debates they are likely to be cut off. That the State specifically permits such voting is not consistent with its claimed compelling interest in intelligent, informed use of the ballot. If the State seeks to assure intelligent use of the ballot, it may not try to serve this interest only with respect to new arrivals. Cf. *Shapiro v. Thompson*, *supra*, 394 U.S. at 637-638.

It may well be true that new residents as a group know less about state and local issues than older residents; and it is surely true that durational residence requirements will exclude some people from voting who are totally uninformed about election matters. But as devices to limit the franchise to minimally knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.

IV

Concluding that Tennessee has not offered an adequate justification for its durational residence laws, we affirm the judgment of the court below.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

FOOTNOTES

¹ Involved here are provisions of the Tennessee Constitution, as well as portions of the Tennessee Code. Article IV, § 1, of the Tennessee Constitution, provides in pertinent part:

"Right to vote—Election precincts . . . — Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

"The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box. . . ."

Section 2-201, Tennessee Code Annotated provides:

"Qualifications of voters.—Every person of the age of twenty-one (21) years, being a citizen of the United States and a resident of this State for twelve (12) months, and of the county wherein he may offer his vote for three (3) months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside."

Section 2-304, Tennessee Code Annotated provides:

"Persons entitled to permanently register— Required time for registration to be in effect prior to Election.—All persons qualified to vote under existing laws at the date of application for registration, including those who will arrive at the legal voting age by the date of the next succeeding primary or general election established by statute following the date of their application to register (those who become of legal voting age before the date of a general election shall election [sic] selecting nominees for such general election), who will have lived in the state for twelve (12) months and in the county for which they applied for registration for three (3) months by the date of the next succeeding election shall be entitled to permanently register as voters under the provisions of this chapter, provided, however, that registration or re-registration shall not be permitted within thirty (30) days of any primary or general election provided for by statute. If a registered voter in any county shall have changed his residence to another county, or to another ward, precinct or district within the same county, or changed his name by marriage or otherwise, within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration."

² On July 30, the District Court refused to grant a preliminary injunction permitting Blumstein and members of the class he represented to vote in the August 6 election; the court noted that to do so would be "so obviously disruptive as to constitute an example of judicial improvidence." The District Court also denied a motion that Blumstein be allowed to cast a sealed provisional ballot for the election.

At the time the opinion below was filed, the next election was to be held in November 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residence requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee now can vote, the problem to voters posed by the Tennessee residency requirements is "capable of repetition, yet evading review." *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911). In this case, unlike *Hall v. Beals*, 396 U.S. 45 (1969), the laws in question remain on the books, and Blumstein has standing to challenge them as a member of the class of people affected by the presently written statute.

³ The important question in this case has divided the lower courts. Durational residence requirements ranging from three months to one year have been struck down in *Burg v. Canniffe*, 315 F. Supp. 380 (Mass. 1970); *Afeldt v. Whitcomb*, 319 F. Supp. 69 (ND Ind. 1970); *Lester v. Board of Elections for District of Columbia*, 319 F. Supp. 505 (DC 1970); *Bufford v. Holton*, 319 F. Supp. 843 (ED Va. 1970); *Hadnott v. Amos*, 320 F. Supp. 107 (MD Ala. 1970); *Kohn v. Davis*, 320 F. Supp. 246 (Vt. 1970); *Keppel v. Donovan*, 326 F. Supp. 15 (Minn. 1970); *Andrews v. Cody*, — F. Supp. — (MDNC 1971), as well as this case. Other District Courts have upheld durational residence requirements of a similar variety. *Howe v. Brown*, 319 F. Supp. 862 (ND Ohio 1970); *Ferguson v. Williams*, — F. Supp. — (ND Miss., Aug. 30, 1971); *Cocanower v. Marston*, 318 F. Supp. 402 (Ariz. 1970); *Fitzpatrick v. Board of Election Commissioners*, — F. Supp. — (ND Ill. 1970); *Piliavin v. Hoel*, 320 F. Supp. 66 (WD Wis. 1970); *Epps v. Logan*, — F. Supp. — (No. 913) (WD Wash. 1970); *Fontam v. McKeithen*, — F. Supp. — (Civ. 71-2631) (ED La.). In *Sirah v. Brown*, — F. Supp. — (Civ. 70-164) (SD Ohio 1970), the District Judge refused to convene a three-judge court and summarily dismissed the complaint.

⁴ Noting the lack of dispute on this point, the court below specifically found that Blumstein had no intention of leaving Nashville and was a bona fide resident of Tennessee. — F. Supp. — (App., p. 36).

⁵ While it would be difficult to determine precisely how many would-be voters throughout the country cannot vote because of durational residence requirements, but see *Cocanower & Rich*, *Residency Requirements for Voting*, 12 Ariz. L. Rev. 477, 478 and n. 8 (1970), it is worth noting that during the period 1947-1970 an average of approximately 3.3% of the total national population moved interstate each year. (An additional 3.4% of the population moved intrastate each year.) U.S. Dept. of Commerce, Bureau Census, Current Population Reports, Population Characteristics, Series P-20, No. 210, Jan. 15, 1971, Table 1, pp. 7-8.

⁶ Compare *Kramer v. Union Free School District*, 395 U.S. 621 (1969), and *Skinner v. Oklahoma*, 316 U.S. 535 (1942), with *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955); compare *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Harper v. Virginia Board of Election*, 383 U.S. 663 (1966), and *Graham v. Richardson*, 403 U.S. 365 (1971), with *Morey v. Doud*, 354 U.S. 457 (1957), and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959).

⁷ Appellants also rely on *Pope v. Williams*, 193 U.S. 621 (1904). Carefully read, that case simply holds that federal constitutional rights are not violated by a state provision requiring a person who enters the state to make a "declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the State." *Id.*, at 634. In other words, the case simply stands for the proposition that a State may require voters to be bona fide residents. See *TAN 15, infra*. To the extent that dicta in that opinion is inconsistent with the test we apply or the result we reach today, that dicta is rejected.

⁸ We note that in the Federal Voting Right Act, Congress specifically found that a durational residence requirement "denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines . . ." 42 U.S.C. § 1973aa-1(a)(2).

⁹ For example, in *Crandall v. Nevada*, 6 Wall. (73 U.S.) 35 (1868), the tax imposed on persons leaving the State by commercial carrier was only \$1, certainly a minimal deterrent to travel. But in declaring the tax unconstitutional, the Court reasoned that "if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars," *id.*, at 46. In *Ward v. Maryland*, 12 Wall. (79 U.S.) 418 (1871), the tax on nonresident traders was more substantial, but the Court focused on its discriminatory aspects, without anywhere considering the law's effect, if any, on trade or tradesmen's choice of residence. Cf. *Chalker v. Birmingham & N. W. R. Co.*, 249 U.S. 522, 527 (1919); but see *Williams v. Fears*, 179 U.S. 270 (1900). In *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 79-80 (1920), the Court held that New York could not deny nonresidents certain small personal exemptions from the state income tax allowed residents. The amounts were certainly insufficient to influence any employee's choice of residence. Compare *Toomer v. Witsell*, 334 U.S. 385 (1948), with *Mullaney v. Anderson*, 342 U.S. 415 (1952).

¹⁰ JUSTICE STEWART specifically noted that quite apart from any purpose to deter, "a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a compelling governmental interest." *Id.*, at 643-644 (emphasis added). See also *Graham v. Richardson*, 403 U.S. 365, 375 (1971).

¹¹ In *Harman*, the Court held that a Virginia law which allowed federal voters to qualify either by paying a poll tax or by filing a certificate of residence six months before the election "handicap[ped] exercise" of the right to participate in federal elec-

tions free of poll taxes, guaranteed by the Twenty-Fourth Amendment.

¹² Where, for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive. See *Shapiro v. Thompson, supra*, 394 U.S., at 638 n. 21.

¹³ However, as noted *infra*, TAN 15, States may show an overriding interest in imposing an appropriate bona fide residence requirement on would-be voters. One who travels out of a State may no longer be a bona fide resident, and may not be allowed to vote in the old State. Similarly, one who travels to a new State may, in some cases, not establish bona fide residence and may be ineligible to vote in the new State. Nothing said today is meant to cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.

¹⁴ See n. 7, *supra*.

¹⁵ See *Fontham v. McKeithen*, — F. Supp. — (Civ. 71-2631, Dec. 7, 1971, p. 12) (E.D. La. 1971) (Wisdom, J., dissenting); *Pope v. Williams*, 193 U.S. 621 (1904), and n. 7, *supra*.

¹⁶ See, e.g., *Cocanower & Rich, Residency Requirements for Voting*, 12 Ariz. L. Rev. 477, 499 (1970); *MacLeod & Wilberding, State Voting Residency Requirements and Civil Rights*, 38 Geo. Wash. L. Rev. 93, 113 (1969).

¹⁷ Obviously, it could not be argued that the three-month waiting period is necessary to confirm residence in the county, and the one-year period necessary to confirm residence in the State. Quite apart from the total implausibility of any suggestion that one task should take four times as long as the other, it is sufficient to note that if a person is found to be a bona fide resident of a county within the State, he is by definition a bona fide resident of the State as well.

¹⁸ See, e.g., *Brown v. Hous*, 163 Tenn. 178, 42 S. W. 2d 210 (1930); *Sparks v. Sparks*, 114 Tenn. 666, 88 S. W. 173 (1905). See generally Law Revision Commission, Title 2—Election Laws, Tentative Draft of October 1971, Section 222 and Comment. See n. 22, *infra*.

¹⁹ In the Federal Voting Rights Act of 1970, Congress abolished durational residence requirements as a precondition to voting in presidential and vice-presidential elections, and prohibited the States from cutting off registration more than 30 days prior to those elections. These limits on the waiting period a State may impose prior an election were made "with full cognizance of the possibility of fraud and administrative difficulty. *Oregon v. Mitchell*, 400 U.S. 112, 238 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.). With that awareness, Congress concluded that a waiting period requirement beyond 30 days "does not bear a reasonable relationship to any compelling state interest in the conduct of presidential elections. 42 U.S.C. § 1973aa-1(a)(6). And in sustaining § 202 of the Act, we found "no explanation why the 30-day period between the closing of new registration and the date of election would not provide, in light of modern communications, adequate time to insure against . . . frauds." *Oregon v. Mitchell, supra*, 400 U.S., at 239 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.). There is no reason to think that what Congress thought was unnecessary to prevent fraud in presidential elections should not also be unnecessary in the context of other elections. See TAN 26, *infra*.

²⁰ As a technical matter, it makes no sense to say that one who has been a resident for a fixed duration is presumed to be a resident. In order to meet the durational residency requirement, one must, by definition, first establish that he is a resident. A durational residence requirements is not simply a waiting period after arrival in the State; it is a waiting period after residence is estab-

lished. Thus it is conceptually impossible to say that a durational residency requirement is an administratively useful device to determine residence. The State's argument must be that residence would be presumed from simple presence in the State or county for the fixed waiting period.

²¹ It should be clear that this argument assumes that the State will reliably determine whether the sworn claims of duration in the jurisdiction are themselves accurate. We have already noted that this is unlikely. See p. 16, *supra*. Another repeating problem for the State's position is the existence of differential durational residency requirements. If the State presumes residence in the county after three months in the county, there is no rational explanation for requiring a full 12 months' presence in the State to presume residence in the State.

²² Tennessee's basic test for bona fide residence is (1) an intention to stay indefinitely in a place (in other words, "without a present intention of removing therefrom," *Brown v. Hous*, 163 Tenn. 178, 42 S. W. 2d 210 (1930)), joined with (2) some objective indication consistent with that intent, see n. 18, *supra*. This basic test has been applied in divorce cases, see, e.g., *Sturdavant v. Sturdavant*, 28 Tenn. App. 273, 189 S. W. 410 (1944); *Brown v. Brown*, 150 Tenn. 89, 261 S. W. 959 (1924); *Sparks v. Sparks*, 114 Tenn. 666, 88 S. W. 173 (1905); in tax cases, see, e.g., *Denny v. Sumner County*, 134 Tenn. 468, 184 S. W. 14 (1916); and in estate cases, see, e.g., *Caldwell v. Shelton*, 32 Tenn. App. 45, 221 S. W. 2d 815 (1948); *Hascall v. Hafford*, 107 Tenn. 355, 65 S. W. 423 (1901); and voting cases, see, e.g., *Brown v. Hous*, 163 Tenn. 178, 42 S. W. 2d 210 (1930); Law Revision Commission, Title 2—Election Laws, Tentative Draft of October 1971, § 222 and Comment.

²³ Indeed, in *Blumstein's* case, the County Election Commission explicitly rejected his offer to treat the waiting period requirement as "a rebuttable guide to Commission action, but rebuttable upon a proper showing of competence to vote intelligently in the primary and general election." Complaint in Appendix, p. 8. Cf. *Skinner v. Oklahoma*, 316 U.S. 535, 544-545 (1942) (Stone, O. J., concurring).

²⁴ See *Harmon v. Forssenius*, 380 U.S. 528, 543 (1965) (filing of residence certificate six months before election in lieu of poll tax unnecessary to insure that the election is limited to bona fide residents in light of "numerous devices to enforce residency requirements"); cf. *Schneider v. New Jersey*, 308 U.S. 147, 164 (1939) (fear of fraudulent solicitations cannot justify permit requests since "frauds may be denounced as offenses and punished by law").

²⁵ Tenn. Code Ann. § 2-1614 makes it a felony for any person who "is not legally entitled to vote at the time and place where he votes or attempts to vote . . . to vote or offer to do so," or to aid and abet such illegality. Tenn. Code Ann. § 2-2207 makes it a misdemeanor "for any person knowingly to vote in any political convention or any election held under the Constitution or laws of this state, no being legally qualified to vote . . ." and Tenn. Code Ann. § 2-2208 makes it a misdemeanor to aid in such an offense. Tenn. Code Ann. § 2-202 makes it an offense to vote outside the ward or precinct where one resides and is registered. Finally, Tenn. Code Ann. § 2-2209 makes it unlawful to "bring or aid in bringing any fraudulent voters into this state for the purpose of practicing a fraud upon or in any primary or final election. . . ." See, e.g., *State v. Weaver*, 112 S. W. 465 (1909).

²⁶ We note that in the period since the decision below, several elections have been held in Tennessee. We have been presented with no specific evidence of increased colonization or other fraud.

²⁷ It has been noted elsewhere, and with specific reference to Tennessee law, that

"[t]he historical purpose of [durational] residency requirements seem to have been to deny the vote to undesirable, immigrants and outsiders with different ideas." *Cocanower & Rich, supra*, 12 Ariz. L. Rev., at 484 and nn. 44, 45, and 46. We do not rely on this alleged original purpose of durational residence requirements in striking them down today.

²⁸ Tennessee may be revealing this impermissible purpose when it observes:

"The fact that the voting privilege has been extended to 18 year old persons . . . increases, rather than diminishes, the need for durational residency requirements. . . . It is so generally known, as to be judicially accepted, that there are many political subdivisions in this state, and other states, wherein there are colleges, universities and military installations with sufficient student body or military personnel over eighteen years of age, as would completely dominate elections in the district, county or municipality so located. This would offer the maximum of opportunity for fraud through colonization, and permit domination by those not knowledgeable or having a common interest in matters of government, as opposed to the interest and the knowledge of permanent members of the community. Upon completion of their schooling, or service tour, they move on, leaving the community bound to a course of political expediency not of its choice and, in fact, one over which its more permanent citizens, who will continue to be affected, had no control." Appellants' Brief, pp. 15-16.

²⁹ In the 1970 Voting Rights Act, § 201, 42 U.S.C. § 1973aa, Congress provided that "no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election. . . ." The terms "test or device" was defined to include, in part, "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrates the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject. . . ." By prohibiting various "test[s]" and "device[s]" which would clearly assure knowledgeability on the part of voters in local elections, Congress declared federal policy that people should be allowed to vote even if they were not well informed about the issues. We upheld § 201 in *Oregon v. Mitchell, supra*.

³⁰ H. E. Alexander, Financing the 1968 Election 106-113 (Citizen Research Foundation 1969); *Affett v. Whitcomb*, 319 F. Supp. 69, 71 (ND Ind. 1970); *Cocanower & Rich, supra*, 12 Ariz. L. Rev. 477, 498 (1971).

³¹ The general provisions for absentee voting apply in part to "any registered voter otherwise qualified to vote in any election to be held in this state or any county, municipality, or other political subdivision thereof, who by reason of business, occupation, health, education, or travel, is required to be absent from the county of his fixed residence on the day of election. . . ." Tenn. Code Ann. § 2-1602. See generally Tenn. Code Ann. §§ 2-1601 *et seq.* An alternative method of absentee voting for armed forces members and federal personnel is detailed in Tenn. Code Ann. §§ 2-1701 *et seq.* Both those provisions allow persons who are still technically "residents" of the State or county to vote even though they are not physically present, and even though they are likely to be uninformed about the issues. In addition, Tennessee has an unusual provision which permits persons to vote in their prior residence for a period after residence has been changed. This section provides, in pertinent part: "If a registered voter in any county shall have changed his residence to another county . . . within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration." Tenn. Code Ann. § 2-304. See also Tenn. Code Ann. § 2-204.

[Supreme Court of the United States, No. 70-13]

WINFIELD DUNN, GOVERNOR OF THE STATE OF TENNESSEE, ET AL., APPELLANTS, AGAINST JAMES F. BLUMSTEIN

On Appeal from the United States District Court for the Middle District of Tennessee, March 21, 1972.

Mr. Justice Blackmun, concurring in the result.

Professor Blumstein obviously could hardly wait to register to vote in his new home State of Tennessee. He arrived in Nashville on June 12, 1970. He moved into his apartment on June 19. He presented himself to the registrar on July 1. He instituted his lawsuit on July 17. Thus, his litigation was begun 35 days after his arrival on Tennessee soil, and less than 30 days after he moved into his apartment. But a primary was coming up on August 6. Usually, such zeal to exercise the franchise is commendable. The professor, however, encountered—and, I assume, knowingly so—the barrier of the Tennessee durational residence requirement and, because he did, he instituted his test suit.

I have little quarrel with much of the content of the Court's long opinion. I concur in the result, with these few added comments, because I do not wish to be described on a later day as having taken a position broader than I think necessary for the disposition of this case.

1. In *Pope v. Williams*, 193 U.S. 621 (1904), Mr. Justice Peckham, in speaking for a unanimous Court that included the first Harlan and Mr. Justice Holmes, said:

"The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that State had the legal right to provide that a person coming into the State to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the State."

"The right of a State to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution."

"The reasons which may have impelled the state legislature to enact the statute in question were matters entirely for its consideration, and this court has no concern with them." 193 U.S., at 632, 633-634.

I cannot so blithely explain *Pope v. Williams* away, as does the Court in its footnote 7, *ante*, p. —, by asserting that if that opinion is "carefully read," one sees that the case was concerned simply with a requirement that the new arrival declare his intention. The requirement was that he make the declaration a year before he registered to vote; time as well as intent was involved. For me, therefore, the Court today really overrules the holding in *Pope v. Williams* and does not restrict itself, as footnote 7 says, to rejecting what it says is mere dicta.

2. The compelling state interest test, as applied to a State's denial of the vote, seems to have come into full flower with *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 627 (1969). The only supporting authority cited at that point is in the "See" context to *Carrington v. Rash*, 380 U.S. 89, 96 (1961). But as I read *Carrington*, the standard there employed was that the voting requirements be reasonable. Indeed, in that opinion Mr. Justice STEWART observed, p. 91, that the State has "unquestioned power to impose reasonable residence restrictions on the availability of the ballot." A like approach was taken in *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969), where the Court referred to the neces-

sity of "some rational relationship to a legitimate state end" and to a statute's being set aside "only if based on reasons totally unrelated to the pursuit of that goal." I mention this only to emphasize that *Kramer* appears to have elevated the standard. And this was only three years ago. Whether *Carrington* and *McDonald* are now frowned upon, at least in part, the Court does not say. See *Bullock v. Carter*, — U.S. —, — (1972).

3. Clearly, for me, the State does have a profound interest in the purity of the ballot-box and in an informed electorate and is entitled to take appropriate steps to assure those ends. Except where federal intervention properly prescribes otherwise, see *Oregon v. Mitchell*, 400 U.S. 112 (1970), I see no constitutional imperative that voting requirements be the same in each State, or even that a State's time requirement relate to the 30-day measure imposed by Congress by 42 U.S.C. § 1973aa-1 (d) for presidential elections. I assume that the Court by its decision today does not depart from either of these propositions. I cannot be sure of this, however, for much of the opinion seems to be couched in absolute terms.

4. The Tennessee plan, based both in statute and in the State's constitution, is not ideal. I am content that the one-year and three-month requirements be struck down for want of something more closely related to the State's interest. It is, of course, a matter of linedrawing, as the Court concedes, *ante*, p. 18. But if 30 days pass constitutional muster, what of 35 or 45 or 75? The resolution of these longer measures, less than those today struck down, the Court leaves, I suspect, to the future.

[Supreme Court of the United States, No. 70-13]

WINFIELD DUNN, GOVERNOR OF THE STATE OF TENNESSEE, ET AL., APPELLANTS, AGAINST JAMES F. BLUMSTEIN

On Appeal from the United States District Court for the Middle District of Tennessee, March 21, 1972.

Mr. CHIEF JUSTICE BURGER, dissenting.

The holding of the Court in *Pope v. Williams*, *supra*, is as valid today as it was at the turn of the century. It is no more a denial of Equal Protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. Cf. *Oregon v. Mitchell*, 400 U.S. 112 (1970). In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the "compelling state interest" standard is to condemn them all. So far I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

The existence of a constitutional "right to travel" does not persuade me to the contrary. If the imposition of a durational residency requirement for voting abridges the right to travel, surely the imposition of an age qualification penalizes the young for being young, a status I assume the Constitution also protects.

Mr. McGEE. In our committee hearings on voter registration, the Department of Justice opposed enactment of a Federal voter registration program on the grounds, among others, that it was unconstitutional. Of course, we are all constitutional scholars. There are 100 in the Senate, 435 in the House, and 200 million in the Nation. But only a few have any real voice in the matter, and only nine have any vote. I extend my sympathy to the former Attorney Gen-

eral, therefore, who directed the Department of Justice to point out the unconstitutionality of Federal legislation regulating durational residency requirements for Federal elections. He guessed wrong. I ask unanimous consent that the particular testimony of the Department of Justice be printed at this point in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF RALPH ERICKSON

If I may just recite that for the record I think it would be helpful. The abolition of durational residency in presidential elections can be justified on the basis that the offices involved are national and are intended to represent national interests. Senators and Congressmen on the other hand, are elected to represent the State from which they are elected. If a highly mobile population is permitted to vote wherever they please, regardless of their ties to or interest in the locality, then the fundamental constitutional concept of geographic representation is undermined.

Mr. McGEE. Mr. President, it has also come to my attention that during our consideration of S. 2574, the Department of Justice made numerous telephone calls to some of my colleagues urging them to vote against the voter registration bill. It is a sad irony that the Department of the Government of the United States charged with insuring voting rights for all citizens under law, for insuring the fair and impartial administration of justice, and charged, under our bill, with insuring that fraud does not occur in Federal elections spent its time lobbying against the enactment of legislation to simplify the procedures for citizens to register to vote.

The time for voting rights has come. The issue of simplified voter registration will not disappear, because of our setback last week. The Supreme Court has struck down another barrier to the people voting to have an effective voice in their government. Surely Congress will not be far behind.

MONOPOLY AND CORPORATE POWER

Mr. HARRIS. Mr. President, the issue of monopoly and corporate power is becoming increasingly important in the 1972 presidential campaign. When I introduced the Concentrated Industries Act last September, some people wondered whether Americans were really concerned about the dangers of unchecked corporate power. Since that time a number of things have shown that people do want action to protect their interests as consumers, workers, and citizens. The Federal Communications Commission responded to public pressure to reopen its investigation of A.T. & T.'s rates. The Federal Trade Commission has moved to break up the shared monopoly in the breakfast cereal industry. And every American has witnessed the sordid spectacle of high officials of the Justice Department and top executives of ITT explain on national television how big business gets its way with big Government.

In an effort to help stimulate thoughtful debate on these issues, Ralph Nader

and Mark Green, two outstanding young advocates of the public interest, wrote to each of the presidential candidates—except President Nixon—asking for their views on monopoly and corporate abuses. I ask unanimous consent to have printed in the RECORD a summary of the responses they received, a copy of their request, and the full statements by the candidates. These statements indicate, I believe, that most of the candidates do appreciate the problem we face in this area and are increasingly willing to face up to the necessary solutions. I hope to hear a great deal more from them on these issues in the months ahead.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

VIEWS ON MONOPOLY

"Why does the American public 'tolerate' the degree of monopoly we now have," the editors of the *Antitrust Law and Economics Review* recently asked; "[t]he answer is they don't know about it." In an effort to inform the American public about the degree and costs—both economic and political—of monopoly, and to try, as individual citizens, to help broaden a campaign dialogue, we sent a letter containing a series of questions concerning antitrust and corporate power to every announced Presidential candidate on January 14, 1972 (sample copy attached). Since President Nixon had already stated that he would not become involved in any campaign statements, he was not included. Enclosed are replies from eight candidates: Senators Humphrey, McGovern and Muskie, Mayors Lindsay and Yorty, Representatives Chisholm and McCloskey, and former Senator McCarthy. Those not replying included Senators Hartke and Jackson, Governor Wallace (his letter is enclosed), and Rep. Ashbrook.

The issue of corporate power has recently threatened to become the equivalent of race in the 1950s and ecology in the 1960s—problems of great magnitude but all avoided in that time. Instead of ignored, the extent and impact of corporate power should be the issue of the seventies. Some towns or countries are developed while others are abandoned; trade tariffs or quotas are written; inflation worsened or eased; technology implemented or suppressed; political campaigns decisively affected; American style and taste manipulated by advertising campaigns; consumers and employees damaged by product or industrial environment hazards—all are issues intimately affected by aspects of corporate power and antitrust.

For the first time within recent memory, major candidates for the Presidency are here taking positions on these subjects. Among others, Mayor Lindsay wrote that, "The real need is for a declaration of independence—Independence of government from corporate domination." Senator McGovern noted that:

"I agree with both of your premises—that the accumulation of corporate power is among the most critical issues to be addressed in 1972, and that the American people deserve to know how the candidates stand, and what they propose to do, on issues of this kind."

"... As a practical matter, the decisions made in the board rooms of these companies (the top 200) can have as much influence on the country's directions, and perhaps more, than decisions made in the United States Congress or in the White House."

According to Senator Muskie, "the fundamental question raised by this issue must be faced by our political leadership. . . . I intend to speak to these issues in a thoughtful and comprehensive manner during the forthcoming campaign."

Considering the replies as a whole, it seems to us significant that: of seven replies concerning federal chartering as a mechanism

for corporate accountability, all seven said they would support the concept or seriously consider supporting it as President; of six candidates addressing themselves to the issue of corporate secrecy, all urged that corporations disclose more of their activities to the public; of five commenting on shared monopolies (oligopolies), four favored either deconcentration suits or legislation.

The ITT-Kleindienst hearings have begun to make antitrust a word of common currency. Perhaps with the aid of this dialogue, antitrust can become more of a subject of uncommon interest to decision-makers charged with implementing or shaping the national policy for a competitive economy.

[Identical letter sent to all announced candidates]

WASHINGTON, D.C.,

January 14, 1972.

Senator EDMUND MUSKIE,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MUSKIE: As the 1972 Presidential race begins, we consider it appropriate to raise with each of the announced candidates an issue whose importance is only matched by its omission during campaigns: corporate power and antitrust policy. It is a problem of intimate impact on all Americans, touching as it does the pocketbooks of all consumers. It decisively affects the level of innovation, the level of inflation, the quality of goods and services, the extent of pollution and product hazards, the role of small business and professionals, the health and safety of employees, and, of course, the prices we pay. These are all issues of magnitude and moment and all are affected by corporate power and antitrust enforcement.

Corporations are clearly a dominant presence in our lives. They account for 56% of national income; listing the top corporations by sales and the top states by general revenues, 21 of the first 25 are corporations. One hundred and eleven industrial firms have over one billion dollars in assets while six hundred have over a hundred million in assets. Our top one hundred firms control about 50% of all industrial assets, or more than what the top two hundred held in 1950, the year Congress enacted the Celler-Kefauver Act; and today's two hundred largest firms control about two-thirds of industrial assets, the same share as was held by the 1000 largest in 1941, the year the Temporary National Economic Committee (TNEC) submitted its final report to Congress recommending an "Investigation of Concentration of Economic Power."

Even more troubling than this extent of so-called aggregate concentration has been the level of actual market domination by a few firms. The best estimates put the proportion of manufacturing value added occurring in monopoly or shared monopoly industries at over 60%. And a monopoly or shared monopoly means, by definition, that competition has ceased to function; a few corporate managements, either by explicit collaboration or by cue, act in unison to keep prices high and to reduce the consumer's moneysworth. Examples of such industries are many: automobiles (GM, Ford and Chrysler), aluminum (Alcoa, Kaiser and Reynolds), rubber tires (Goodyear, Firestone, U.S. Rubber and Goodrich), steel (U.S. Steel, Bethlehem, National and Republic), soaps-detergents (Procter & Gamble, Colgate-Palmolive, Lever Bros.) and cereals (Kellogg, General Foods).

A secret staff report now at the Federal Trade Commission estimates that "if highly concentrated industries were deconcentrated to the point where the four largest firms control 40% or less of an industry's sales, prices would fall by 25% or more." Such problems go far beyond the esoterica of economic data. They impose real costs on real

people. For example: there were once numerous competing milk firms in Minneapolis-St. Paul in the mid-sixties, but only three big milk firms in neighboring Duluth-Superior; although costs were similar in both markets, the half-gallon wholesale price in 1967 was 33.8 cents in Minneapolis-St. Paul, 45 cents in Duluth.

While there was once as many as 88 competing auto manufacturers in 1921, today the "Big Three" produce 83% of all cars sold in the United States and 97% of all domestic models; industrial economist Leonard Weiss, of the University of Wisconsin, has estimated that the noncompetitive state of the auto industry costs consumers \$1.6 billion. The oil import quota, by keeping out much foreign competition, permits domestic oil firms to overcharge by an estimated \$5-\$7 billion per year; for the family of four in New York, it means an average of \$102.32 added to gasoline and home heating bills every year. While all Americans paid an average of 20 cents for a loaf of bread in 1964, consumers in Seattle paid 24 cents, or 20% more, due to a local price-fixing conspiracy.

In the aggregate, the economic cost inflicted by industrial concentration can only be described as staggering. Monopoly tends to misallocate resources and depress production. As a result, our Gross National Product is smaller than it would otherwise be. It has been recently estimated by two eminent economists, William Shepherd and F. M. Scherer, that the overall cost of monopoly in terms of lost product (or "lost GNP") is between \$48 billion and \$60 billion annually. Further, Shepherd has estimated that monopoly redistributes wealth regressively by \$23 billion annually. How? Scherer explains that "monopoly profits realized by industrial corporations transfer income from the average consumer to the relatively rich," since it is the wealthy who own the lion's share of all publicly held stock.

"Why does the American public 'tolerate' the degree of monopoly we now have," asked the Editors of *The Antitrust Law and Economics Review*; "The answer is they don't know about it." The fault, to an extent, must lie with public officials who have failed both to bring it to public attention and to take a stand on it. Whatever the reason, it can no longer remain hidden. The results are too expensive: they provide the superstructure for much of our present inflation; they lead to Lockheed-ballout situations, where firms become so big and important that they cannot be permitted to fail; they cause the retardation of pollution technology for which we all pay the piper; they lead to the consolidation of political power with economic power; and they inspire the expansion of government controls to deal with noncompetitive and hence unaccountable markets, viz. Phases I and II.

Attorney General John Mitchell recognized verbally the dangers in a widely reported June 1969 speech: "I believe that the future vitality of our free economy may be in danger because of the increasing threat of economic concentration by corporate mergers. . . . The danger that this super-concentration poses to our economic, political and social structure cannot be overestimated." More recently, Congressman Emanuel Celler has introduced a bill to consolidate and enhance the antitrust enforcement powers of the Justice Department and the Federal Trade Commission.

Senator Fred Harris has introduced a bill to decentralize our major monopolies into more efficient and competitive units. Senator Philip Hart, Chairman of the Senate Antitrust and Monopoly Subcommittee, has announced that he intends to submit his own version shortly. The Federal Trade Commission is on the verge of issuing a complaint charging the three biggest cereal companies with being an illegal shared monopoly.

All the foregoing, however, are just pro-

posals. There are other proposals pushing in the pro-monopoly direction. The Nixon Administration has hinted for months that antitrust laws should be eased in order to permit mergers of domestic firms to improve their competitive position with their foreign competitors. It is anticipated that President Nixon will make just that recommendation in his State of the Union Address. But it has already been done for him by Senators Warren Magnuson and Daniel Inouye, who have introduced a bill which basically exempts export cartels from the reach of the Sherman Antitrust Act.

These and related issues all warrant the response of those public officials who seek the Presidency, that office best situated to change the thrust and pace of our antimonopoly enforcement. A Presidential campaign should candidly bring to the citizenry the great issues of the day and citizens, as well, should have an opportunity to stimulate such a response. We respectfully request, therefore, that you reply to the following questions. Our purpose is to compile the answers for distribution to interested citizens and press. We believe that the compiled answers will prove helpful to the American consumer in evaluating this vitally important matter.

(1) What are your views on the legislation proposed by Congressman Celler (H.R. 12004), and Senators Warren Magnuson and Daniel Inouye (S. 2754)? Do you favor the deconcentration of large shared monopolists—General Motors, for example—as would be accomplished by Senator Fred Harris' bill S. 2614?

(2) Do you agree with the antitrust enforcement policy of President Nixon's Justice Department that conglomerates can and should be sued under prevailing antitrust doctrine but that shared monopolies cannot and should not be?

(3) Senator Nelson is holding a series of hearings inquiring into corporate secrecy. Do you think corporations should systematically make public, except in limited trade secret situations, the following information:

Profit and loss statements by product line;
Amount of pollution emissions and effluents for all product lines and plant facilities;
Occupational injuries and diseases suffered each year by type and number of employees affected;

Listing on the container or product the name and amount of all ingredients in the product;

Product testing, including test methodology, selection process and results, for every product marketed;

Public files of all consumer complaint letters, and documentation pro and con for all product hazards discovered internally or identified and alleged by outside parties;

Factual substantiation of all advertising claims.

(4) Do you think a new TNEC investigation should be called to probe and publicize economic concentration in America today?

(5) If elected President, would you consider supporting a Federal Chartering Act, which would require that large corporations doing interstate business get their corporate charters from the national government, rather than from the individual states as now?

(6) What are your general views regarding problems and solutions to corporate power and monopoly? What do you think of the following mentioned methods to achieve corporate accountability:

More "corporate democracy" and "shareholder rights";

Stronger and more frequently imposed white collar criminal sanctions;

More and better antitrust enforcement;

More and better health, safety and rate regulation;

"Public enterprise" (Comsat, Amtrak) or nationalized industries;

Appeals to corporate responsibility on the part of corporate managers;

Internal corporate due process to protect dissenters and to preserve constitutional rights of all employees.

Thank you for your considered responses.

Sincerely yours,

RALPH NADER,
MARK GREEN.

U.S. SENATE,

Washington, D.C., February 29, 1972.

MSRS. RALPH NADER and MARK GREEN,
Washington, D.C.

DEAR SIRS: Your letter concerning corporate power and antitrust policy asks pointed and probing questions on a subject of great importance that has been of concern to me for many years. Although I have not been able to analyze the details of all the statements in your letter, I am in basic agreement with the view that there must be limits to concentrations of economic power and that antitrust enforcement should be a major means of limiting such concentrations of power. Furthermore, I agree with the premise that the maximization of consumer welfare is the talisman—not the value of small or big enterprise for their own sakes, but the production and delivery of a diversity of quality goods at low prices.

The subject is a vast, technical and complex one (as the length of your study report indicates) and would require a lengthy analysis for complete discussion. I am unable to provide that. I can, however, provide you with relatively brief answers to your specific questions.

(1) Your first question refers to three altogether different legislative proposals. H.R. 12004 was introduced by Congressman Celler to deal with economic concentration by setting up an administrative organization to control large corporate mergers, acquisitions and interlocking relationships. Your letter refers to this as "a bill to consolidate and enhance the antitrust enforcement powers of the Justice Department and the Federal Trade Commission." That conclusion is in question. The bill creates a new Office of Industrial Organization under a cabinet level Administrator; it repeals Section 2 of the Sherman Act, Section 11 of the Clayton Act, and all of the major regulatory statutes. The net effect of these changes is to take a very substantial part of the antitrust enforcement power away from the Department of Justice and the Federal Trade Commission and lodge it in the Administrator of the new Office of Industrial Organization. It is open to question whether this will increase the efficiency or effectiveness of antitrust enforcement or merely add a third agency to the two now engaged in antitrust enforcement. There have been no hearings on this bill yet, so we do not have the benefit of comments from the Department of Justice or the FTC. In any event, I would want the comments of my Attorney General in the next administration and other experts before approving such a major reduction in the enforcement powers of the Department of Justice.

The substantive provisions of the Celler Bill are similar in many respects to existing antitrust statutes, but do contain some provisions that may be an improvement in existing law. The proposed prohibitions on interlocking directorships and officerships, for example, go considerably beyond the present provisions of Section 8 of the Clayton Act and seem to be a distinct improvement. On the other hand, the provision for direct appeal of antitrust cases exclusively to the Supreme Court is retained.

Nearly all scholars who have studied this subject, including the Supreme Court itself and the Assistant Attorney General in Charge of the Antitrust Division under both Democratic and Republican administrations, have all concluded that this is an outmoded procedure which actually handicaps antitrust

enforcement. In most cases, a Court of Appeals is able to give more expeditious and thorough review to a case than the Supreme Court, and for many years the Department of Justice has advocated eliminating or modifying this provision. This is a technical matter that illustrates the difficulty of now stating before hearings an overall judgment on this bill in its present form.

S. 2754, introduced by Senator Magnuson and Senator Inouye, is a very long and comprehensive proposal to expand U.S. exports. The bill, I notice, has 13 titles relating to such subjects as the establishment of an International Commerce Service (similar to the State Department Foreign Service), establishment of a Trade Development Corps, grants to state and local governments, an export trading program, regional American merchandise centers, export commercial paper, ocean freight rate disparities and other related matters. Many of these provisions seem worthwhile and the sections dealing with ocean freight rate disparities strike at a long standing abuse.

However, since the focus of your letter is on antitrust, I assume that you are concerned with the provisions dealing with chartered export associations. This title would give exemption from the antitrust laws to chartered export associations. This title would give exemption from the antitrust laws to chartered export associations approved by the Secretary of Commerce. It is similar to but broader than the present Webb-Pomerene Act. I am told that the Department of Justice has presented testimony on this bill criticizing provisions of Title VII and opposing their enactment.

I am inclined to oppose these provisions, but neither my staff nor I have been called upon to study the bill since it has not yet reached the floor, and I would want to see if there is persuasive evidence that the bill is in the national interest by stimulating trade and assisting our balance of trade position. The notion that there should be a favorable balance of payments is, of course, at the root of the Magnuson proposal, but reducing competition and hence output and efficiency is neither the means to the end nor a price worth paying. Reducing competition is simply not the way to make industry capable of producing efficiently, having effective research, adopting dynamic marketing techniques, and so on.

S. 2614, introduced by Senator Harris, is a bill which embodies recommendations of the White House Task Force on Antitrust Policy.

In introducing the bill, Senator Harris said that in his view all of the evils at which the bill is aimed are "already illegal under existing antitrust law." The FTC has recently brought suit against the four largest manufacturers of breakfast cereal on what is reported to be a theory of "shared monopoly" or oligopoly in action. There will, of course, be hearings on this bill before it is presented for legislative action. I will want to study and weigh the testimony and evidence of the hearings on the bill, as well as observe legal and economic developments in this area, in order to determine the need and desirability of such legislation before it is presented to me for action.

(2) The conglomerate problem involves primarily a concern for bigness and for concentration of wealth and the political and social power which accompanies such concentrations. And, the present Attorney General and the recent Assistant Attorney General in charge of the Antitrust Division have made some stirring speeches about the dangers of monopoly and economic concentration. However, their record has been considerably less impressive than their speeches. It has been a record of lost motions, moot questions, consent decrees, lost cases. The present Department of Justice has demonstrated that it can start antitrust suits against conglomerate mergers.

The FTC has recently shown that it can start proceedings against companies having "shared monopolies," hardly a new doctrine. It seems to me that the facts speak for themselves. The antitrust laws, like most other laws, are enforced effectively not by speeches or filing a few headline making cases, but by continuous, vigorous, fair and effective enforcement, day after day and month after month. This is the kind of antitrust enforcement I favor and will provide, and, in the long run, this is the only way to make the laws effective.

(3) I favor full disclosure of all information that may be significant or useful to consumers and to those concerned with effective operation of the economy. There should certainly be encompassing and effective laws or regulations requiring the disclosure to consumers of the identity, ingredients and significant characteristics of products. We must recognize that implementation of this principle is complicated and difficult, but we have made substantial progress in this area over the years and I'm confident that a new administration, truly responsive to consumer needs, can secure the promulgation and enforcement of effective laws and regulations requiring factual disclosures to consumers on labels and containers and substantiation of factual advertising claims.

With respect to a financial statement by product lines, such information may in fact enable the government better to ascertain where markets are monopolistic. With respect to the amount of pollution emissions and effluents for all product lines and plant facilities, this kind of information should be made public. Occupational inquiries, product ingredients, and product testing information should be made public. Public files of consumer complaints and factual advertising substantiation ought to be made public.

But we must recognize that the way to get disclosures on all of these categories is by having an administration dedicated to the public interest which will staff the departments and agencies with energetic and like-minded officials. If new laws should be needed to require disclosures necessary to protect consumers, workers or the public, I will not hesitate to advocate and actively seek appropriate legislation.

(4) A White House Task Force on Antitrust Policy was appointed by President Johnson and rendered a report in July 1968. A Task Force on Productivity and Competition was appointed by President Nixon and rendered a report in February 1969. Neither report has received much attention or study and from all appearances the present administration has sought to bury both reports. There has been no discussion of either report by a responsible spokesman of the present administration.

It seems to me that there has been too much of a tendency to appoint a study group and thereafter ignore it altogether. Certainly that has been the case in this administration. On the other hand, the two White House Task Forces have engaged only in surveying published work and rendering their own analysis and expert opinion. Although a great body of literature does exist, I do think that there should be a new effort to gather factual evidence regarding the question of economic concentration in the United States today.

More studying, however, ought not to hold up taking action when evidence is clear. I do not have a firm opinion whether this additional investigation can best be done by establishing a new commission, on the model of the TNEC, or by utilizing some one or more of the existing agencies on Congressional committees. I think that this is a subject for investigation and would certainly insist upon having current factual evidence on this subject gathered as a basis for decision and action by federal agencies.

(5) The question as to whether there should be a Federal Chartering Act for large corporations doing interstate business implies that the powers of the federal government to regulate corporate activity in interstate commerce are subject to legal limitations. I am not a lawyer, but it seems to me that the decisions of the Supreme Court in recent years have held that the federal government has all the authority that it needs to achieve any social objectives with respect to corporations engaged in interstate business. Is there a special purpose in having a corporation chartered by the federal government rather than by one of the states?

The important issues involve substantive matters with respect to conduct that is permitted, require or forbidden. The substantive laws are, of course, enacted by Congress and the issues have not concerned the power of the federal government to act but rather the desirability of proposed kinds of government action. I am not aware that any of the substantive problems will be simplified by the adoption of a Federal Chartering Act. If that should prove to be the case, and if it appeared that there were problems which required the federal chartering of large corporations, I would certainly support such a statute.

(6) In general, as indicated above, I believe that there must be limits set to the concentration of economic power and monopoly and that we must have sustained and vigorous enforcement of the antitrust laws in order to achieve this. However, the antitrust laws are not, by themselves, adequate to insure either the structure or the performance that we desire in our economy. There are many other provisions of law and government action that are also important. For example, the tax laws have done much to encourage mergers and acquisitions. It is quite possible that appropriate revisions in the tax law may be as effective, or more effective, than antitrust prosecution, in determining large corporate mergers.

Certainly corporations, as large aggregations of economic power, should have internal due process to protect the rights of their employees as well as their stockholders, and we should have more corporate democracy and greater legal concern for the rights of both employees and stockholders.

I am in favor of more and better health, safety and rate regulation, as well as more and better antitrust enforcement. Ultimately we must have a widespread recognition by the majority of corporate managers that business has a social responsibility, as well as the opportunity to earn a profit. We can accomplish much by laws and law enforcement. However, there are limitations to what can be accomplished by laws and law enforcement. In order to achieve the best of which we are capable, we must have leadership by the government together with an active sense of social accountability by responsible citizens and business leaders. Business, business leaders and other citizens must demonstrate a willingness to assume the full burdens of social responsibility in achieving the social goals which most of us share.

Sincerely,

HUBERT H. HUMPHREY.

U.S. SENATE,

Washington, D.C., February 29, 1972.

MR. RALPH NADER and MR. MARK GREEN,
Corporate Accountability Research Group,
Washington, D.C.

DEAR RALPH AND MARK: Thank you very much for your letter inviting my views on the trend toward economic concentration in the United States.

I agree with both of your premises—that the accumulation of corporate power is among the most critical issues to be addressed in 1972, and that the American people deserve

to know how the candidates stand, and what they propose to do, on issues of this kind. I am, therefore, presently preparing a detailed series of recommendations to deal with economic concentration. I hope you will regard what I have to say now as an interim response to your questions, and that you will also examine the more detailed recommendations I will be making in the weeks ahead.

(1) The Celler Bill to bring the anti-trust enforcement powers of the Justice Department and the Federal Trade Commission into a single unit would be a useful step, and I support it. However, this must be done under terms assuring that the new agency will be completely independent of political pressures.

I am opposed to a special anti-trust exemption for export firms as Senators Magnuson and Inouye have proposed, first because it would deny protection to our own consumers and domestic competitors and, second, because it could create as many problems as it would solve with respect to foreign competition. We have sufficient experience to know that monopoly power tends to worsen problems of inefficiency.

I have joined as a cosponsor of S. 2614, and it has my full support.

(2) I do not. Shared monopoly is much more of a threat to competition than the conglomerate, and that, rather than artificial organizational distinctions, must be the ultimate test in determining whether anti-trust enforcement should be applied.

(3) Yes. Corporate secrecy should be sharply limited to cases in which the information bears on trade or marketing secrets and in which release would deny the company a competitive advantage it has earned. All of the subjects listed are appropriate for shareholder and public review. As you may know, I have introduced legislation requiring substantiation of advertising claims and product testing.

(4) Yes. Although there may be better vehicles than the Temporary National Economic Committee used in 1941, I would support a current thorough investigation of economic concentration and its implications.

(5) Federal chartering would be of limited value in the abstract, but it could serve as an important vehicle for enforcing public interest limitations on corporate activities. Unlike the extremely liberal acts of most states, a Federal Chartering Act would have to be carefully drawn to achieve those results. In addition, I would consider federal chartering as a supplement to state statutes, rather than a substitute, to permit state regulation as well.

(6) The trend toward economic concentration raises at least two issues for serious debate and action.

First is the decline in competition itself, and the harmful consequences which follow from that trend—rising prices, a lack of innovation, inefficiency, and industrial stagnation. We have long since made the value judgments on this issue, and we have chosen in favor of protecting free enterprise against monopoly and monopolistic practices. The priority need here, therefore, is for better enforcement of existing anti-trust laws and for new legislation, where necessary, to account for changes in the nature of the economy and for methods of bringing about the results of monopoly which could not have been contemplated during consideration of the original Sherman and Clayton Acts.

On the second issue we have really made no value judgments, except by default. I refer here to the role played by the large corporations in both defining and shaping our political and economic institutions, and it is an issue which should concern us regardless of whether or not competition can be preserved.

Government thus far has made no attempt to regulate or discourage bigness *per se*; in fact the most passionate arguments have been made against efforts of that kind.

But it seems to me that there are profound important reasons for at least examining

what it means when just six firms receive one quarter of all manufacturing profits, or when 200 firms control two thirds of all industrial assets. As a practical matter, the decisions made in the board rooms of those companies can have as much influence on the country's directions, and perhaps more, than decisions made in the United States Congress or in the White House. Further, because of traditional methods of political financing, those companies have had the power to assure that their interests will be protected regardless of what else government does, and regardless of which party is in office. And protection of their interest can easily mean neglect of important public needs.

One way to respond to this growing corporate power is for the Federal government to use its own considerable influence as the country's biggest consumer, as has been done to some extent with respect to automobile safety standards. Federal procurement standards can certainly influence corporate priorities. They could also have a bearing on corporate size, and on such problems as runaway industries.

But in any case, considering the whole of our economy, I am not philosophically ready to say that such bigness is either inevitable or acceptable. I do not welcome the trend toward proportionately fewer independent entrepreneurs and proportionately more dependent employees because I think it has a negative impact not only on the goal of a free economy but also on the nature of our political and social systems.

On the specific points you raised:

(a) There is certainly room for improvement in the area of shareholder rights, including access to information of the kind discussed in an earlier question. At the same time, however, I do not see much of value to be gained by attempts to remake the corporate structure in the image of political democracy, in order to influence its decisions in favor of the public interest. Certainly the public interest should be raised in corporate decisions, and that is one reason for favoring the inclusion of public directors on corporate boards. But we have to recognize, too, that the essential purpose of these institutions, and the reason shareholders invest in them, is to make money. It is probably futile and also unreasonable to expect them to perform the government's role as well. If government offers profits in exchange for the production of napalm, for example, I think it misses the mark to assign the primary blame to the corporation rather than to the government. To cite another case, it is at best a chancy proposition to expect that an industry which pollutes air and water will voluntarily end those practices so long as they are permitted by government. We urgently need government that is more responsive in these areas, and I intend to press for that goal. It is more realistic and more attainable than seeking corporations which are willing to regulate themselves.

(b) It is ludicrous to expect maximum fines of \$50,000 to deter crimes which can net millions of dollars. It makes far more sense to deny the violator any benefit than to levy fines of treble damages, or, where appropriate, to impose prison terms on top of economic penalties. The fact that prison terms have been given on only three occasions in the entire history of anti-trust enforcement clearly documents the need for more rigorous application of existing sanctions.

(c) The consolidation of anti-trust law enforcement agencies could accomplish a great deal within the context of existing law. Since the decision as to whether or not to prosecute these cases is so obviously susceptible to political pressures, such decisions should not be made by political appointees serving at the pleasure of the President.

(d) I agree on each point. The Occupational Health and Safety Act has been a severe disappointment thus far from the

standpoint of all parties, and it needs both revision and more vigorous implementation. Similarly, existing regulation on rates is exceedingly uneven at best. In many cases it appears that regulatory commissions exist to ratify and legitimize, rather than to prevent, excessive rates.

(e) This may be appropriate in some areas, particularly in the few instances—such as power generation and transmission—where competition is not a practical alternative, and where the public interest is deeply involved. I would, however, generally prefer steps to preserve and restore competition where that can be done.

(f) Such appeals should certainly be made, but they cannot effectively substitute for government steps to remove the profitability from or prohibit activities which are contrary to the public interest.

(g) The nation's labor unions have accomplished a great deal in this respect. I am still studying the question of whether it would be appropriate for the Federal government to adopt legislation extending similar rights to that proportion of the work force which is not unionized, and I have not yet reached a conclusion.

With every good wish, I am

Sincerely,

GEORGE MCGOVERN.

U.S. SENATE,
Washington, D.C., January 27, 1972.
Messrs. RALPH NADER and MARK GREEN,
Washington, D.C.

GENTLEMEN: Thank you for your letter of January 14 concerning economic concentration in the United States. I am glad you have raised these issues of paramount importance to our society. I, as well as you, feel that the fundamental question raised by this issue must be faced by our political leadership.

I have been concerned about these issues and my staff has been doing intensive research on them. I intend to speak to these issues in a thoughtful and comprehensive manner during the forthcoming campaign.

I also shall answer your detailed questions in the very near future, as soon as I can give some thought to them.

Sincerely yours,

EDMUND S. MUSKIE,
U.S. Senator.

U.S. SENATE,
Washington, D.C., February 4, 1972.
Messrs. RALPH NADER and MARK GREEN,

GENTLEMEN: I would like to respond to the questions you raised in your letter of January 14 concerning my position on the concentration of industry and on antitrust policy. Because you have asked specific questions, I shall make my response to them as brief and to the point as possible.

As I noted to you in my interim response to your letter, I intend to discuss the question of competition and monopoly in the forthcoming campaign.

In answer to your specific questions:

1. Congress clearly needs to reexamine the antitrust laws in the light of present day realities and revise them as necessary to provide the tools to deal with the problems of economic concentration. Also enforcement of present antitrust laws must be more vigorous and more consistent. I feel that Section 2 of the Sherman Act and Section 5 of the Federal Trade Commission Act can be used effectively to combat the problem of concentration. I have under study proposals that will address the need of further legislation to deal with the problem of economic concentration.

2. I feel that prevailing antitrust doctrine permits suits against conglomerates as well as the so-called "shared monopolies" or oligopolies. The present action of the FTC against cereal manufacturers is a good example.

3. I agree that corporations should make

public, subject to the limitations to which you refer in your question, all of the seven categories of information you list in your third question.

4. I very much favor a new TNEC investigation to focus public attention on the question of economic concentration.

5. If elected President, I would consider supporting a Federal Chartering Act.

You know of my commitment to increased corporate responsibility. The methods you suggest are useful tools toward that end, although public ownership may be appropriate in particular cases, like Comsat, but not in others.

Sincerely,

EDMUND S. MUSKIE,
U.S. Senator.

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York City, N.Y., March 7, 1972.
Messrs. RALPH NADER and MARK GREEN,
Washington, D.C.

DEAR MESSRS. NADER AND GREEN: Enclosed is my response to your questionnaire on Corporate Power.

With best wishes.

Sincerely,

JOHN V. LINDSAY.

STATEMENT BY JOHN V. LINDSAY ON CORPORATE POWER AND ECONOMIC CONCENTRATION

During the six years I have served as Mayor of New York City, I have become increasingly aware of the costs of concentrated power in America—public and private. Unchecked private power, no less than arbitrary public power, seriously threatens a free society. The antidote for both involves diffusion of power, disclosure of information needed to make intelligent choices in the public and private marketplace, and access to decision-making by those most directly affected by it.

In the last five years New York City has pursued more vigorously than any government in the nation a campaign to protect the public and the consumer from unfair or unwarranted actions of business.

We have established the first Department of Consumer Affairs in the nation, which has enacted tough regulations to give consumers the information and tools needed to stand on an equal footing with industry. These include strong rules against deceptive advertising, the country's first municipal unit-pricing law to enable consumers to shop comparatively, and an open-dating law to give consumers full information about food freshness.

We have established in that Department an Office of Consumer Advocacy, authorized to bring class actions on behalf of aggrieved consumers.

We have been the first City in the nation to establish a Consumer Protection Division within its Department. We have instituted over 20 anti-trust cases and secured millions of dollars of refunds for consumers, including \$37 million from price-fixing drug companies.

We have brought suit against unjustified telephone rate increases and demanded that any such increases be linked to service.

We have established a cabinet-level committee, with full time staff, to monitor the City's public utilities and represent users before regulatory commissions, the first effort of its kind by any city in the nation.

We have brought consumer protection programs to the people through neighborhood offices to assist individual consumers in gaining redress from offending businesses.

We have scrutinized, scaled down, and, in some cases, rejected plans for construction of electric power plants, in order to preserve the quality of New York's environment.

We have cast the shares in New York City's pension fund on behalf of the corporate responsibility proposals submitted by

Campaign GM, the only government in the nation to do so.

Many of the needed reforms of big business, however, are beyond the range of even the most active local government. The growing concentration of economic power has become one of the root problems of the American economy. In industry after industry, the basic decisions that shape our economic lives—decisions on wages, prices, product quality, product safety, and pollution—are made not by the anonymous forces of the marketplace, but by a handful of corporate executives.

Instead of acting as a check on big business, the federal government has too often acted as its silent partner. One by one, steps taken to control private power have been undermined and diluted. The anti-trust laws have never been systematically directed against "shared monopolies." The securities acts of the New Deal have made corporations disclose information needed by investors, but have left vital public questions unanswered. The regulatory agencies have shielded some industries from competition rather than subordinating them to the public interest.

Last year, President Nixon spoke of a "New American Revolution"—which turned out to be no more than a reshuffling of federal bureaucracies. The real need is for a declaration of independence—indeed, of government from corporate domination. It must include the following guarantees:

1. **Corporate Information and Disclosure:** The executives of some of our largest corporations have as much discretionary power over the lives, lungs, and pocketbooks of American citizens as do our Governors. Yet it is often impossible for public officials and private citizens to probe the soundness of those decisions because they are cloaked in secrecy. Corporations should, of course, be permitted to preserve legitimate trade secrets. However, they should be required to disclose information dealing with the public impact of their private decisions.

Specifically, I propose a Corporate Freedom of Information Act which would require an annual report to the public with the following information:

1. Profit and loss by product line;
2. An Environmental Impact Statement specifying the amounts and kinds of pollution discharged;
3. Job-related employee health and safety data;
4. Contents of each product as well as the unit price where appropriate (which would also be listed on the product container);
5. Results of product testing;
6. Factual substantiation of advertising claims;
7. Consumer complaints, recognized product hazards, and records of recoveries by consumers in defective product suits.
8. Corporate lobbying expenses and all contracts with government officials involved in decisions affecting the company.

In addition to opening up corporate decision-making to public scrutiny, government decision-making involving the regulation and supervision of business should be taken from behind closed doors. Anti-trust settlements, private rate-making, and the formulation of regulatory policies are particularly susceptible to political interference and should therefore be placed on the public record.

2. **Anti-trust and deconcentration:** The anti-trust laws must be made to apply to the giant "shared monopolies"—great corporations which co-ordinate their prices and thereby extract a premium from the consumer's dollar.

There is considerable support for the proposition that existing anti-trust laws can be effectively employed to proceed against oligopolistic industries. However, to the extent that existing legislation is inadequate, I support new legislation to give the government

a clear mandate to proceed against "shared monopolies." I support the recommendations of the Neal Task Force on Anti-Trust, empaneled by President Johnson, that the growth of the handful of mammoth corporations which control some of our most critical industries should be stopped and their power reduced. I subscribe to the basic objectives of the Harris bill.

I also endorse the general approach of the proposals to shift the burden of justification to corporations proposing mergers with significant economic impact. This will provide a useful tool for anti-trust enforcement.

I am not convinced however, that removing enforcement power for structural anti-trust offenses from the Justice Department and the FTC and establishing a new Office of Industrial Organization, will provide substantial benefits. The only guarantee of a vigorous anti-trust policy is a President thoroughly committed to one and a public that is aware of its stake in anti-trust enforcement. An anti-trust President will appoint an anti-trust Attorney-General and ensure an anti-trust Justice Department.

I oppose any effort to broaden the anti-trust exemption for export cartels and, instead, call for repeal of the special provisions allowing such cartels.

The alarming concentration of two particular industries—energy and agriculture—deserve special attention. Oil, gas, coal and atomic fuel ownership is becoming increasingly mingled, under the benevolent gaze of the Federal Power Commission. New legislation may be necessary to divest this common ownership wherever feasible. The entry into agricultural production by giant, non-farm conglomerates threatens the existence of the small and efficient independent farm in America. I support the legislative proposals to prohibit vertical integration into agriculture by large, non-farm corporations and force the divestiture of existing agricultural holdings by these corporations.

The Nader questionnaire suggests a new set of national hearings modeled on the TNEC hearings on economic concentration held in the late 1930's. I propose a broader investigation, into the nature and extent of corporate power, not simply within particular industries but in the economy as a whole. The investigation should encompass:

1. The conglomerate merger movement;
2. Economic concentration through vertical and horizontal integration;
3. Economic effects of state and federal regulation in communications, power, oil, agriculture, shipping, ground transportation, airlines, professional regulation, and other fields;
4. Corporate involvement in government decision-making, including the extent of corporate lobbying and expenditures in political campaigns;
5. Tax, subsidy, and tariff concessions enjoyed by corporate interests.

Such hearings should be—as a matter of law—undertaken every ten years.

1. **Regulation and subsidization:** A Senate committee recently estimated that the federal government gives out \$63 billion in subsidies every year—a major fraction to narrow business interests. These subsidization policies have often developed without extensive public debate and are often maintained long after their original purpose has been exhausted. As a result, they are often contradictory, dysfunctional, and counter-productive. Oil companies, shipping companies, agri-business corporations, and trucking firms are among those who receive a generous boost from the American taxpayer.

Other regulatory policies have the effect of transferring money directly from the consumers' pocketbook to the bank accounts of favored industries. Government-imposed oil import quotas nick every American family for over \$100 a year. A government-sponsored price fix for truck transportation raises

the cost of virtually everything we buy and use. Airline tickets cost more because the government fences out competition. Telephone charges increase constantly while a basic re-examination of the phone company by government gets bogged down in intra-governmental buck passing.

I propose the following:

The abolition of oil import quotas as recommended by President Nixon's own Task Force and vetoed by the White House.

A thorough and comprehensive review of federal subsidies—direct payment, tax loss, and in-kind services—to determine which are essentially private windfalls and must be abolished or modified.

Elimination of minimum rate regulation and entry controls for all forms of transportation—air and surface.

A strengthened FCC investigation of ATT rates with the full cooperation of all government agencies.

Tighter regulation of large, national corporations is imperative. Because of their pervasive impact on our lives and their deep involvement in government, they have become, in many cases, essentially "quasi-public" entities. Such regulation—over the social impact of corporate decisions, over the scope of shareholder rights, and over public access to corporate information—can only be accomplished on the federal level. It can be carried out either under the rubric of federal chartering or by special legislation, such as the Corporate Freedom of Information Act, the "shared monopoly" legislation and the other legislative proposals I have suggested. The practicality and value of federal chartering as the method to achieve tighter regulation deserves serious consideration.

Effective Consumer Remedies: As long as the marketplace is an ineffective mechanism for protecting the consumer, new methods must be devised to ensure that he will not be victimized by excessive corporate power. I support:

Legislation to facilitate the initiation of consumer class actions.

A Federal Consumer Protection Agency, with the power to intervene on behalf of consumers before all federal agencies and the ability to bring class actions on behalf of consumers.

The encouragement of public interest advocates by permitting the deductibility of contributions to such tax exempt entities and permitting public interest law firms to pursue litigative strategies without endangering their tax exempt status.

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 18, 1972.
MR. RALPH NADER and MR. MARK GREEN,
Washington, D.C.

DEAR MESSRS. NADER AND GREEN: I am pleased to respond to your letter of January 14, discussing corporate power and anti-trust policy in America. I am, of course, very familiar with your work in this area and want to take this opportunity to note how great a debt is owed to you by the unemployed, the working man and the consumer of this nation.

My campaign is based on many of the assumptions which your previous work and your letter support. At the heart of my campaign is the conviction that the concentration of economic power and wealth in America is largely responsible for many of the internal social problems we face today, and that the Nixon Administration, so closely allied to and dependent on big business, is either unwilling or unable to act effectively for the public benefit.

My position papers will elaborate on this theme. In the enclosed copy of my economic policy position, I have called for increased corporate income taxes as part of major tax reform. The enclosed position paper on our criminal justice system calls for greater at-

tention to white collar crime including price-fixing, perjury, bribery, and antitrust policy, and the environmental policy paper documents the servile knuckling under of the Nixon Administration on pollution matters. Other position papers on health and consumer affairs will similarly show how great is the influence of big business on all facets of American society and our foreign policy as well. Copies of these papers will be forwarded to you as soon as they are published.

I stand on such a platform with the knowledge that the leading candidates for the Democratic nomination, according to the polls, may well eventually find themselves beholden to wealthy, corporate contributors whose influence could remain considerable during their administrations. I offer my candidacy without the endorsements or support of the rich, feeling myself to speak out candidly and realistically on the key issues.

I address myself to your specific points, which rightly provide for the dispersal of economic power and greater governmental authority to force changes in the structure of our economic institutions.

(1) I support and will vote for Congressman Celler's Corporation Control Act, H.R. 12004. I expect to oppose S. 2754. I most emphatically support Senator Harris' bill, S. 2614, and will work for the deconcentration of large shared monopolists.

(2) No.

(3) Yes.

(4) Yes.

(5) Yes.

(6) I support each and every one of the methods you suggest. May I note that I have doubts about the likely success of our "public enterprises" such as Comsat and Amtrak. The superior performance of the nationalized railroad system in Europe suggests that nationalization be seriously considered for such enterprises here. You have proposed, I believe, that corporate managers be made personally liable for corporate responsibility. To some extent, as you may know, this idea is already in practice in Italy where I understand owners and managers have been jailed for pollution offenses. I feel this proposal has real merit.

May I close with the comment that I am devoting my political career to turning this country around, to reversing its priorities and ending the unfairness, injustice and inequality which permeates our national life. In dedicating yourselves to the same cause, you give me the confidence to believe that this effort can succeed, despite the enormity of the task. I earnestly hope your letter and related activities will encourage more political figures to begin to challenge the political and economic power of the corporate state, and its ability to impose its will on the Nixon Administration and its distorted values on the American people.

Sincerely,

SHIRLEY CHISHOLM,
Member of Congress.

SHIRLEY CHISHOLM SPEAKS OUT
PRESIDENTIAL CAMPAIGN POSITION PAPER
NO. 4—THE ECONOMY

The disastrous performance of the economy under the Nixon Administration can be largely understood as the result of the Big-Business orientation of this government and its utter disregard for critical problems of the consumer, the worker, and the unemployed poor. Millions of low-income Americans have deeply suffered from the Nixon Administration's callous handling of the economy. The Nixon recession has, of course, created tragic side effects—increased crime, increased welfare rolls, and widespread despair among the poor and unemployed of America over the moral intentions of this Administration.

More and more Americans now realize how close is the Nixon Administration's alliance with the huge corporate interests of this

country. They remember clearly when, six days after his inauguration, President Nixon announced that the government would not intervene in price and wage discussions. They remember very clearly when the Administration calmly admitted that an increase in unemployment in America would be necessary to reduce inflation. The result of this passivity towards the rich, on the one hand, and this incomprehensible coldbloodedness toward the worker and the poor on the other, has been the worst possible economic crisis—virtually complete economic stagnation, increased and continuing inflation, record-high unemployment, the first trade deficit since 1893, a huge balance of payments deficit, a world monetary crisis and forced devaluation of the dollar.

The economic record of this Administration is very clear, and its statistics are appalling for the average American taxpayer. The cost of living in America has risen under this Administration at a rate double that during the previous Administration. Food prices have skyrocketed, the cost of owning a home has soared, medical and hospital costs have shot beyond control. Local transit fees have gone up 18%. Basic commodities such as copper and steel mill products increased in the first year of this Administration to the percentage increase during the entire eight-year period from 1961-8.

Nixon policies have caused the largest increase in unemployment in over a decade, an increase from 3½% to over 6% of the labor force, or 2 million jobless workers. The unemployment rate for construction workers has more than doubled. The unemployment rate for manufacturing employees has almost doubled. The number of workers forced to live on unemployment compensation has doubled. The unemployment rate for Black Americans has climbed to over 10%. Black teenage unemployment is at an intolerable 38%. There is little sign that this aloof Administration has any real concern for the personal impact of unemployment in terms of relatives out of work, or for its social impact in terms of Black and youth unemployment.

While prices have soared and the low-income worker has lost his job, the Nixon Administration's bungling has virtually halted this nation's economic growth. The industrial production index fell steadily during the past 3 years and the real Gross National Product declined. The cost of borrowing has risen at an alarming rate with interest rates soaring to the highest level in 100 years. Housing construction has fallen more than 20%. State and local governments have been unable to borrow for vital public projects, so they have had to close schools or saddle taxpayers with burdensome interest costs.

The Nixon recession represents the fourth major recession of the past 20 years—all having occurred under Republican Administrations. At the root of it all is the unique, privileged relationship which these Administrations have enjoyed with this nation's giant corporate and industrial interests, whose arrogant power has for too long been permitted to control Washington and thus, all our lives. In the time-honored Republican tradition of "what is good for General Motors is good for the country," this Administration refused to act when, at the outset of its first year in office, big business coolly and confidently proceeded to announce huge price increases on a wide range of products. As prices began to rise along the entire economic front, the Administration then began to cut back on government spending in an effort to cool the inflation.

Which were the federal programs to be cut? Federal assistance to libraries and related community services, education centers, aid for handicapped children, bilingual education, community health centers, medical libraries, and health research facilities, as-

sistance to medical schools, and consumer assistance. Jobs in these vital fields were abolished, and people were thrown out of work. The Job Corps Program has been substantially reduced and the Office of Economic Opportunity is being gutted.

At the same time, this Administration energetically pushed those wasteful and enormously expensive programs benefitting its big business constituency—the ABM, SST, the C5A, Lockheed, highway construction, and unjustified subsidies for corporate farms.

By slashing domestic programs, by continuing the 10% income tax surcharge, and by its tight money policy of high interest rates, the Nixon Administration sacrificed the ambitions and energies of millions of low-income Americans, those who could least afford to bear the burden of such a sacrifice.

We had heard much in the 1968 campaign of Nixon promises of jobs and training for Black Americans, and of his "firm" support for "Black Capitalism." One look at the record and at the ghettos of America's cities shows the utter emptiness of those campaign promises. The only action by the Administration to promote "Black Capitalism" was the creation of an office of Minority Business Enterprise in the Commerce Department, an office with no authority to make loans or to fund or supervise programs. One after another of the helpless officials of this program have, not surprisingly, been forced to quit.

With the Nixon Administration having virtually destroyed any hope for improvement in the miserable economic position of the poor and the low-income worker, Congress acted. It passed a law to provide hundreds of thousands of immediate jobs to the unemployed—and the President vetoed it. Congress passed a bill providing Day-Care Centers for children, whose mothers could then join the work force, and the President vetoed it too.

The Administration then turned around and, showing where its real interests lay, acted to give billions of dollars of tax relief to business via the 10% investment credit, on top of its \$4 billion a year depreciation "reform." The President killed an effort to limit political campaign contributions by the rich, in full knowledge that he will count on these huge sums to buy his re-election next November. So this incredible story ends—with the chairman of the board of General Motors earning a salary of ¼ of a million dollars in 1971 at the same time that the unemployed in Seattle have so little to eat that Japan feels obligated to ship food to help them survive.

More and more thoughtful Americans, including a growing number of businessmen, have been shocked to learn of the economic inequality and exploitation which are destroying the very fabric of American society. They have come to realize that this is a government of, by, and for big business. The Nixon Cabinet and other top officials in the Administration represent one of the greatest concentrations of individual wealth in the world, and, as such, they predictably resisted for so long the use of the powers of the Presidency in curbing the inflationary pressures that have been destroying the value of the American dollar. This country can no longer stand the Nixon Administration's divisive and incompetent economic policies.

The economic philosophy of the Nixon Administration is based on the principle that the business of America is business. This being the case, the economic reality for the inexperienced and untrained Black man and the poor will be "last to be hired and first to be fired." This is an Administration which ignores the social and psychological costs of its policies to the common man. It is an empty shell, the tool of slick advertising techniques, the prisoner of narrow political allegiances, and the faithful servant of those privileged and selfish economic interests

which systematically block every attempt to narrow the great gap between the rich and the poor in this country.

If this Administration again triumphs at the polls in November, we can expect further abuse of the poor. We may expect new regressive taxes, such as a national sales tax (value added), which will fall on those least able to afford. There will be substantial, new increases in defense spending, new space shuttle, and fat new contracts for the war industry. Those programs tending to eliminate some of the intolerable inequities of our economic system will continue to be vetoed. Funds for an adequate family assistance program will be cut and slashed.

Rebuilding and revitalizing the society after four traumatic years of the Nixon Administration depends more than anything else on meaningful changes in our economic priorities, and this, the Nixon Administration, by its very nature, can never accept. This Administration's values and sense of social relations constitute a fatal obstacle to any hopes for real social and economic progress in America. A government so heavily dependent on a small clique of corporate millionaires, industrial polluters, and privileged power brokers can never be seriously expected to concern itself with the daily problems of the poor, the working man, the unemployed, the black, the young, or the elderly pensioner.

No Administration can be so indissolubly connected to the interests of big business and special interests and still work to eliminate its crisis or credibility and intent among millions of Americans.

I believe that the future of our great society depends upon the ending of government by the conservative, repressive, and selfish. It depends upon the ending of the economic exploitation of the common man, black and white, by those privileged powers which now rule Washington.

My Administration will move emphatically to assist those Americans presently estranged from the American economic system. It will seek representation for those performing vital services, such as domestic workers, while gaining miserable compensation. It will devote itself to the creation of an ultimately more balanced economy and to the final elimination of the intolerable inequality and poverty which we should all be ashamed to admit exists in this, the wealthiest nation in the history of man. Some of the principal means which I support toward these ends are as follows:

1. Ending the billion dollar cost of U.S. military involvement in Indochina;

2. Creation of a Federal Family Assistance Program to replace the present Welfare Program and the Food Stamp Program which is a failure. The initial minimum guaranteed income for a family of four would be \$6,400.

3. Tax Reform. The tax proposals of the Nixon Administration have consistently favored business over the low-income consumer. State, local, and city taxes are increasing while the progressive, graduated income tax has been reduced. My Tax Reform Program will reduce unfairness and special privilege in the following ways:

I. (A) Increased individual and corporate income (even a 1% increase would raise \$6 billion);

(B) Elimination of the oil depletion allowance;

(C) Elimination of the capital gains tax;

(D) Elimination of regressive federal payroll taxes;

(E) Establishing of excess profits tax;

4. Reductions in Federal spending;

(A) Elimination of the huge federal subsidies paid to rich farmers not to grow crops;

(B) Reduced spending on federal highway construction;

(C) Reduced defense spending, including the closing of unnecessary military installations and the reduction of our troop levels abroad by 50%;

(D) Reduced spending on space programs and cancellation of the space shuttle project;

5. Expansion of job opportunities through creation of useful 500,000 public service jobs, with preference to the 350,000 unemployed veterans. Greater federal assistance for labor manpower training programs. Increased federal programs to put highly skilled unemployed engineers to work in mass transit, air and water pollution control programs; maintenance of some form of wage-price controls, particularly on rents;

6. Federal legislation to guarantee equal opportunities for women in attaining jobs, equal pay, and promotions.

7. Creation of a comprehensive national day-care system to permit more mothers to work.

8. Greater federal support for O.E.O., E.E.O.C., O.M.B.E., and S.B.A.—greater support for minority enterprise and employment.

Shirley Chisholm for President Headquarters, 20 E Street, N.W., Washington, D.C. 20001.

HOUSE OF REPRESENTATIVES,
Washington, D.C., January 24, 1972.

MR. RALPH NADER,
Washington, D.C.

DEAR RALPH: This is an initial response to your letter of January 14.

I would like to comment more fully in the future, but thought you might get at least a partial idea of my thinking from the enclosed speech I gave at Dartmouth.

Keep up the good work.

Best regards,

PAUL N. McCLOSKEY, Jr.

REMARKS BY CONGRESSMAN PAUL N. McCLOSKEY, DARTMOUTH COLLEGE, NOVEMBER 29, 1971

I would like to discuss tonight two or three fundamental issues in the 1972 campaign. The issue is what John Gardner recently referred to as "The Dirty Little Secret That Everyone Knows"—the vast influence of money in politics.

The influence of money in political decision-making is not new—it has been with us since the inception of Democratic self-government. Under the Nixon administration, however, the threat of concentrated wealth, working secretly to influence governmental decision-making, has reached crisis proportions, and threatens the very existence of the nation itself.

Why should this be so? The reason lies in the fact that the faith of our people is the strength of our system of government. It is not just a desired aspect of our national stability and security—it is essential to that national stability and security.

We can never forget that we are a nation which operated by the consent of the governed. Our people must consent to file honest tax returns, consent to give honest judgment in jury cases, consent to serve in the armed services in time of conflict. That consent is and can only be based on faith in government—faith that the government is honest and faith that it is truthful.

What is the present measure of the faith of Americans that their government is honest, truthful and worthy of trust? A recent poll taken by the Center for Political Studies at the University of Michigan reflects specifically the trend which I believe all of us have instinctively sensed in recent years.

Since 1958, the faith and trust of Americans has been diminishing rapidly. During the past seven years, the number of Americans trusting the government to do what is right all or most of the time dropped from 63.7% in 1964 to 37.7% in 1970.

During the same time frame, the question was asked: "Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?" The percentage of Americans believing the

government was run for the benefit of all the people dropped from 63% in 1964 to 41% in 1970. By 1970, the second year of the Nixon administration, nearly half of the people interrogated stated their belief that the government was being run by a few big interests looking out for themselves.

There was ample reason for that belief in 1970. There is even clearer reason today. An increasing concentration of wealth working secretly to support political candidates and to influence government decisions is not only welcomed but encouraged by the Nixon administration. Let me define precisely the three evils which so endanger the nation.

First, the new concentration of wealth primarily in big business;

Second, the new importance of wealth in electoral politics;

Third, the administration's encouragement of secrecy in the application of that wealth in political campaigns and in governmental decision-making.

With respect to the new concentration of wealth, there can be no question. Attorney General Mitchell recognized the problem over two years ago. By June 1969, 200 large corporations controlled nearly 60.7% of the manufacturing assets of the nation. Corporate mergers had more than doubled in the previous year. The Attorney General said in a speech in June 1969, "The danger that this super concentration represents to our . . . political . . . structure cannot be overestimated."

He went on to mention "the unacceptable probability that the nation's manufacturing and financial assets will continue to be concentrated in the hands of fewer and fewer people,"—the very evil that the Sherman Act, the Clayton Act and other antitrust and anti-price-fixing laws were designed to combat.

What did the Attorney General mean when he used the words "danger to our political system" by the concentration of economic power? In effect, he was recognizing the basic fact that the concentration of economic power also meant the concentration of political power.

The whole thrust of our constitutional form of government was to restrain the accumulation of power. James Madison had said "the accumulation of all power, legislative, executive and judicial, in the same hands may justly be pronounced the very definition of tyranny. An accumulation of economic power sufficient to control political decisions can likewise create tyranny."

Senator Kefauver once said: "Through monopolistic mergers the people are losing power to direct their own economic welfare. When they lose the power to direct their economic welfare they also lose the means to direct their political future."

Why, then, has the Nixon administration failed to provide leadership to reduce this increasing concentration of wealth and power?

The answer may lie in the second evil. The influence of big money on the political process. This Administration is the primary beneficiary of the economic power of big business. This is the Administration which has placed primary emphasis on the profits of big business as the goal of our economy—on the theory that those profits will ultimately "trickle down to the public at large."

This Administration resurrected the SST after it had been abandoned by the Johnson Administration, supported the bail-out of the Penn-Central Railroad and urged the granting of a federal loan guarantee to Lockheed under conditions no small business in America could have hoped to obtain.

This administration's chief fund raiser, Maurice Stans, was named Secretary of Commerce. Now, for the next campaign, is reported that he will resign his post in order to again raise funds chiefly from the big businessmen of America.

Who besides big businessmen can afford to attend \$500 per plate dinners? The \$5 million dollars raised from those nation-wide dinners several weeks ago was raised almost entirely from big businessmen. In Houston, Texas, nearly all of the 400 people in attendance (raising \$200,000 for the President's reelection) were reported to be oil men. What does this bode for the hope of ending the oil import quota system as recommended by the President's task force over two years ago?

Three years ago, the Republican party was able to raise twice as much money from businessmen as was the Democratic party from all sources. As the administration in power, the Republican leadership is in a beautiful position to cash in on its enthusiasm for big business. A concentration of wealth unaccompanied by campaign spending and contribution reform merely makes it that much easier to raise more money than the opposition. The White House just announced that the President will veto the proposed public financing bill just passed by the Senate. Getting \$1.00 from each of 20,000,000 is far less beneficial than getting \$20,000,000 from a few thousand corporate executives and oil men, particularly when the opposing party cannot hope to raise equivalent sums.

This administration has not hesitated to respond swiftly and helpfully to those who make large campaign contributions.

Consider the great milk boondoggle of last spring finally disclosed in the newspapers only a few weeks ago.

The government has long had the power to guarantee the price of manufactured milk. Last March that guarantee was \$4.66 per hundred weight. The dairy farmer leaders came to Washington to seek an increase. Secretary of Agriculture Hardin denied the increase, finding no evidence to support it.

The dairy farmers, then, ten days later, on March 12, paid \$10,000 to four Republican campaign committees. The next day, March 23, the dairy farmer leaders were granted an audience with the President himself at the White House.

The following day, March 24, the dairy farmers paid \$25,000 to ten Republican committees for the re-election of the President. Lo and behold, the following day, March 25, Secretary Hardin announced that he would grant a price increase of 27 cents per hundred weight on the basis that "continuing research" had turned up new information on rising costs.

Ten days later, April 5, \$45,000 was given to nine additional committees. And by August 20, a total of \$170,000 had been given to at least 68 committees, most if not all of them based in Washington, D.C. where a loophole in the law permits them to go unrecorded as to the source and amount.

On September 3, 40,000 dairy farmers met for the biggest and perhaps happiest dinner in the history of Chicago. The President dropped by to pay his respects, and no wonder.

The importance of money to politics can be easily recognized when we look at last year's Senate races in seven large states. Fifteen candidates (New York had three) ran in those seven states. Eleven of the candidates were millionaires, and all seven of the winners were millionaires.

The cost of campaigning has skyrocketed. No candidate for public office today has even the remotest chance of winning unless he has either immense personal wealth or wealthy backers. This is a tragedy for the democratic process. Only 2½% of our people earned over \$25,000 per year in 1969. Who, earning less than that sum, can afford more than a few dollars for the candidate of his or her choice? The importance of campaign financing is threatening to subvert the whole process of democracy. The concentration of the wealth necessary to campaign financing threatens to subvert our whole concept of a government of separated powers and to destroy that most priceless asset of all, our faith that our gov-

ernment is not controlled by a few big financial interests.

Let me give you one additional example of the power of wealth and the power of generous campaign contributions to President Nixon. This example came to light only recently in testimony before my own House subcommittee on Conservation and Natural Resources.

ARMCO Steel was the 69th largest corporation in the United States in 1970. Its corporate officers were reported by the *Washington Star* to have given \$14,000 to the Nixon campaign.

ARMCO Steel has also been one of the worst polluters of the Houston ship channel. Its Houston plant for years has been putting nearly a half ton of cyanide per day into the ship channel. Cyanide is one of the most toxic substances known to man.

On December 9, 1970, the EPA filed an action to force a termination of the cyanide discharge after all negotiations with the company had failed.

On September 17, 1971, the federal district judge issued an order requiring that the discharge of cyanide cease forthwith.

On September 28, the President of ARMCO, Mr. C. William Verity, wrote a letter to President Nixon at the White House, asking him to look into the Court's decision. On September 30, Mr. Verity was reported to have commented that Secretary of the Treasury Connally had been contacted and that through his influence, high level consultations were going on at that moment between the Justice Department and the EPA concerning the decision.

On October 4, the Houston Business Journal quoted Verity as saying, "I pray every night for John Connally . . . if I could only have another son, his name would be John Connally Verity. At last there is reality in Washington and it changes the entire outlook for the steel industry and most gratefully ARMCO."

The letter Mr. Verity had sent to the President and the efforts of Mr. Connally were apparently successful, because a few days later on November 4, 1971, the EPA and the Justice Department stipulated to a modification of the Court's judgment of September 17, permitting ARMCO to continue the discharge of cyanide until July 1, 1972.

The seriousness of this set of circumstances lies in the fact that after a lawsuit was in progress, after a judgment was obtained, the posture of the prosecution was relaxed not by the arguments of counsel for ARMCO, communicated to the government attorneys and the court, but by the direct intervention by the steel company president with the President of the United States. This sort of conduct is reprehensible. Any ordinary litigant who sought personally to stop a lawsuit by the Justice Department would be condemned or prosecuted.

Only recently, a Justice Department attorney, Richard Kleindienst, testified against an aide of Senator Fong who had suggested that a large campaign contribution might be forthcoming if a particular prosecution against a constituent would be halted. This aide was convicted.

Since the inception of this country, attempts to interfere with the prosecution of the litigation by the parties themselves have been considered a violation of law and reprehensible. President Nixon is a lawyer. Nevertheless, his personal assistant Peter Flannigan admittedly contacted EPA and the Justice Department after the President received Mr. Verity's letter.

Mr. Flannigan is no stranger to big business. He was also a fund raiser for Mr. Nixon's 1968 campaign as the President of the Barracuda Tanker Corporation, owner of the Liberian flag tanker Sansinena. Under United States law, the tanker was ineligible for U.S. coastal shipping unless a waiver

ment. Being ineligible for such trade, the Sansinena was worth an estimated \$4.5 million; if the waiver could be granted, it would be perhaps worth \$11 million.

For several years, Mr. Fred Hartley, President of the Union Oil Company, had reportedly been trying to obtain a waiver for the Sansinena. The waiver could be not be granted so long as U.S. tankers were available for the coastal trade. On February 25, 1970, Flannigan's 300 shares of stock in Barracuda were sold to others in the Barracuda venture. On March 2, the Treasury granted an unusually broad waiver for the ship, on the ground that the national security required it.

Senator Joseph Tydings disclosed these facts in a speech to the Senate on March 9th, stating that by a stroke of the pen, the government had made \$6.5 million for Barracuda. My own Committee on Merchant Marine & Fisheries prepared to hold a Congressional inquiry on the subject, whereupon the White House called Treasury officials to the White House on the evening of March 9. The next day, Secretary of the Treasury David Kennedy announced that the waiver would be cancelled. The national security apparently no longer required the Sansinena for the coastal shipping of oil.

These examples merely illustrate the power of wealth applied to the governmental decision-making process.

By far the worst evil we face today is the secrecy of large financial contributions which are permitted by loopholes in the law. The Corrupt Practices Act passed in 1925 purports to limit both campaign contributions and spending. Yet, when I commenced this campaign for President, I found that the law has loopholes that a truck could be driven through. The law does not apply to primaries, for example. As mentioned earlier, it does not apply to committees based in Washington, D.C. One wealthy individual can give millions of dollars if he wishes, merely by limiting his gifts to a \$5,000 contribution to separate committees. To receive the \$170,000 kindness of the milk producers, for example, the Republican National Committee merely set up a whole series of Washington committees, with names like "The Committee for the American Dream," or "Committee for Sound Economy." But for the error of the attorney who thought the law applied, we might never have had the chronological relationship between the campaign contributions to the President and the Administration's change of heart on milk prices.

A funny occurrence in Chicago was disclosed recently. Vice President Agnew attended a \$1,000 per plate dinner in Chicago in 1968. False listings of campaign contributors of at least \$22,000 were then filed with the Clerk of the House of Representatives. Let me quote from the report of James R. Polk, a former Associated Press reporter who investigated 1968 campaign spending under a grant from the Fund For Investigative Journalism:

"Eighteen donors listed for \$22,000 in the Victory '68 record confirmed in interviews that they didn't give the money. Bunched among the false listings were names of a dozen more persons who refused to answer questions, didn't remember, couldn't be found, or died."

Who *did* give the \$22,000 in question remains a mystery. Chances are that they were big businessmen of considerable wealth.

The examples of secrecy in campaign contributions are legion. Within six months of my own first election to Congress in 1967, lobbyists from three large industries or associations of industries dropped by my Congressional office to pay their respects and leave me an envelope filled with five or ten \$100 bills. Being new to the business, I politely inquired of each one as to the names and addresses of the donors—the gift bearer

in each case indicated that the names would be furnished later, and in due course I received a list of names of people from Omaha to Baton Rouge who had each given me \$100. I had the distinct impression my inquiry was not the usual practice.

In 1968, 181 Members of Congress filed statements that they had received no contributions and had spent no money on their campaign. Committees had done it for them. The evil lies not in the gift, but in its secrecy.

I raise this issue tonight because the President has made it clear that he intends to veto the public campaign financing bill just passed by the Senate as he did the spending limitation bill a year ago. And only a few days ago his Congressional Liaison representative dropped by the Republican cloakroom in the House of Representatives to let it be known that the White House would not be unhappy if the campaign reform legislation now before the House is killed altogether this year.

This is a key issue to the future of America and the restoration of both the honesty and openness of government as well as public faith in government.

The answers are relatively simple. We need a new law which absolutely limits individual contributions, which provides a tax write-off for small contributions, which reasonably limits expenditures in the various media, which grants a reasonable chance for equal debate time to all candidates at the lowest available rates, and above all else requires complete disclosure of contributions and adequate enforcement powers and procedures. Many of these provisions are included in the Senate bill which the President has said he will veto and in the legislation now before Congress. As compared with the present system of secrecy and corruption, I strongly favor the Senate bill. If the President continues to oppose campaign contribution disclosure and reform, I believe he should be defeated on that basis alone in the March 7th primary. I hope, for the good of the country, he will withdraw his opposition.

OFFICE OF THE MAYOR,
Los Angeles, Calif., February 4, 1972.
Messrs. RALPH NADER AND MARK GREEN,
Washington, D.C.

GENTLEMEN: I welcome the opportunity you have given me to comment on the very important issue of corporate power and anti-trust policy. Before responding to the specific issues raised by you in your letter of January 14, 1972, I would like to point out that our free enterprise system is one of the primary reasons that this country is so great. We must work hard to maintain our free enterprise system and instruct our children in its many merits and its relationship to our personal freedoms and liberties. We all have a stake in maintaining the free enterprise system and must not abuse it as is being done by the present administration which is using our credit rating based upon the productivity of our economy to borrow excessively thus producing unprecedented federal deficits and debt increases.

I favor competition as necessary to the survival and proper functioning of the free enterprise system and for the protection of the nation's consumers. I am not anti-business, large or small, but big power is subject to big abuse making necessary government intervention on behalf of the consumer-citizen. The "cue" or "follow the leader" system is obviously used by some to evade anti-price fixing statutes. When detected, this practice must be dealt with promptly. Also, when management representing a monopoly bargains with a monopolistic Union, the consumer can be the victim of unfair prices, especially where foreign competition is not a factor in pricing policies.

Now, as to the specific issues raised by you: I favor vigorous enforcement of existing

laws against monopolistic practices without fear or favor. I also favor legislation to insure competition, thus strengthening our free enterprise system and giving reasonable protection to the consumer.

As regards corporate secrecy, I feel that corporations should be required to disclose most of the information you mention. Reporting of such things as profit and loss by product line, pollution emissions by plant facilities, and documentation of consumer complaints, appear to be reasonable requirements. However, I do not feel that we should so burden industry with disclosure requirements as to unreasonably hinder their operations and raise the costs of production which would then have to be passed on to the consumer. These matters should be based on reason and not emotion.

Your suggestion that a new investigation be made similar to that conducted by the (TNEC) to probe and publicize economic Temporary National Economic Committee concentration in America may have some merit. You will recall that the original TNEC was formed by Congressional resolution prior to World War II (1938) to study the monopoly and the concentration of economic power in the United States. This Committee published some important monographs and had its effect on the American Economic System. Before another such a committee is formed, however, we should make a determination that existing agencies cannot and are not adequately performing this function. Also, I would not want to see this type of activity degenerate into a "witch hunt" as is too often the case.

If I were elected President, I would definitely consider supporting a Federal Chartering Act requiring large corporations doing interstate business to secure their corporate charters from the federal government, rather than from the individual states as they now do. This would go a long way in securing needed conformity in reporting and accountability, and corporations would no longer find it possible to easily "escape" these requirements by obtaining their charters in one state as opposed to another.

Many of my general views regarding problems and solutions to corporate power and monopoly are outlined above. However, here again I feel that we must proceed in a reasonable manner. I cannot quarrel with many of the methods you propose for achieving corporate accountability but I do feel that as much as possible we should attempt to get voluntary compliance from industry on these matters. When that fails, of course, we must go to the courts. I do not believe in harassment of business or exaggeration of faults.

Thank you for this opportunity to express some of my views on this subject.

Very truly yours,

SAM YORTY,
Mayor.

WASHINGTON, D.C.,
January 24, 1972.

Mr. RALPH NADER,
Washington, D.C.

DEAR RALPH: I have received your letter of the 14th including the questionnaire.

I am glad that you are raising this question. The corporation has been a matter of concern to me in public speeches since at least 1960 when I began to talk about its arbitrary power and to use the term *corporate feudalism* as descriptive of the institutionalization and the economic and political independence of the large corporations.

I have watched for 20 years the evidence of the ineffectiveness of our anti-trust laws. Whereas I do not despair of their having some effect, I am not very encouraged and am of the opinion that more direct regulation of the large corporations that are non-competitive, and also of the large ones which have the appearance of competition such as the automobile industry, is the only available

effective way of proceeding. I am not convinced that having 20 automobile companies rather than four major ones would move us any closer to the solution of the problem of the automobile.

On most of the issues you have raised, I have been making the record clear for 20 years.

I do think we should move toward federal chartering of corporations.

I am in favor of more corporate democracy and regulation in all critical areas, and possibly a public member on the board of corporations above a determined size.

With best wishes,

Sincerely yours,

EUGENE J. MCCARTHY.

THE WALLACE CAMPAIGN,
Montgomery, Ala., March 6, 1972.

Mr. MARK GREEN,
Washington, D.C.

DEAR MARK: Due to our extremely heavy mail load, we received your letter only this morning. Unfortunately, the Governor has been on a tour in Florida and we would not have been able to get to him by your deadline, anyway. Unlike other candidates, Governor Wallace answers these type questions himself. He does not allow anyone else to speak for him. He feels this is the only honest way to answer questions.

Please keep in touch with us and call us anytime.

We certainly appreciate your interest.

Very truly yours,

JOE AZBELL,
Director of Communications.

OKLAHOMANS GIVE THEIR VIEWS

Mr. BELLMON. Mr. President, periodically Oklahomans are invited to give their opinions on various matters of public interest. Recently our office distributed a questionnaire dealing with three major issues before the Senate this year: welfare reform, revenue sharing, and deficit spending.

Mr. President, I ask unanimous consent that the questionnaire, with results shown in percentages, be printed in the RECORD.

There being no objection, the questionnaire was ordered to be printed in the RECORD, as follows:

QUESTIONNAIRE

1. Welfare Reform:

Please indicate by a check which of the following you favor:

6% Guaranteed annual income for poor people.

32% System that would encourage a welfare recipient to take a job without losing benefits.

84% Requiring able-bodied welfare recipients below 65 to register for a job or training and take a job when one is offered.

43% If no jobs are available, create public works jobs.

6% Stop welfare entirely and let people go hungry if they can't or won't work.

2. Revenue Sharing:

Each year the federal government returns large amounts of money to state and local governments in the form of special aid programs. Proponents of revenue sharing say that under the present system the decisions on where this money goes are made by federal bureaucrats who do not have to stand for election and sometimes tend to become dictatorial. They favor returning a portion of federally-collected tax revenues directly to state and local officials with no strings attached. One big argument is whether the money should go directly to mayors and other local officials or to the state government to be divided.

Do you favor the general concept of revenue sharing? 43% Yes, 35% No.

Do you prefer the present system of Federal grants for hospitals, highways, education and crime control? 53% Yes; 31% No.

Which level of government do you have the most confidence in? 19% City; 17% County, 30% State, 33% Federal, 4% None.

Would you prefer that any new Federal funds go to the state government, (42%); county government, (16%); or city government, (25%).

If the state government had the responsibility of allocating funds to local units of government, who should make the decision? 9% Governor, 82% Legislature.

3. Deficit Spending:

President Nixon's new budget contains a deficit estimated at nearly \$38.8 billion, the 17th deficit in 20 years. Do you favor deficit spending? 9% Yes, 86% No.

To cut the size of the federal deficit, would you raise taxes (6%); or reduce spending, (89%).

If you favor raising taxes, which ones would you raise? 11% Income, 3% Property, 16% Gasoline, Liquor-tobacco 14%, None 9%.

Do you favor a federal added-value tax, with funds going to support local schools in lieu of property taxes? 28% Yes, 53% No.

If you favor reducing expenditures, where would you cut? 10% National Defense, 85% Foreign Aid, 44% Space Research, 12% Agriculture, 4% Natural Resources, 9% Highways and Airports, 38% Community Development and Housing, 9% Education and Manpower, 5% Health, 58% Welfare, 9% Veterans Benefits.

SOME NEWS ABOUT OUR PERFECT NUCLEAR SAFETY RECORD

Mr. GRAVEL. Mr. President, although there has not yet been a disastrous nuclear power accident in this country, there have been some close calls, like the Fermi accident in 1966, and numerous operating fiascos which indicate how lucky we have been.

The AEC's regular reports, called "Reactor Operating Experiences" or ROE, describe blunders and problems which would be comic except that some day these problems may result in a nuclear accident which renders several States of this Nation uninhabitable.

LEAVING IT TO THE EXPERTS

Five ROE examples typify the mechanical and human defects:

ROE 69-9 concludes as follows:

In the recent past, there have been a number of occurrences at reactors where human error resulted in undesirable situations. None of these situations represented a threat to the health and safety of the public. The absence of more serious effects is largely the result of good luck.

From ROE 69-10 we learn that, during a routine check at a power reactor, abnormal radioactivity was observed in the building water distribution. The presence of radioactivity was confirmed in the plant drinking fountains. The contamination was found to have arisen from an inappropriate cross-connect between a 3,000-gallon radioactive waste tank and the water system. The report concludes:

The coupling of a contaminated system with a potable water system is considered poor practice in general.

From ROE 71-22 we learn that 63 out of 191 containment isolation valves failed to operate when tested at one nuclear

powerplant; their failure apparently resulted from rust, oil, and water, present due to lack of preventive maintenance.

ROE 69-8 reports that:

Within the past two years at licensed reactors, a number of instances have occurred wherein important valves failed to operate properly.

In one case, an entire core spray system was found inoperative because check valves had been jammed during assembly. The system, which is a critical component when the reactor is in trouble, may have been inoperative for a year before discovery.

The implications of ROE 71-3 may be the worst of all, for, during low-power operation of a large nuclear plant, safety rods failed to respond to a reactor SCRAM, or shutdown. A number of safety elements, in redundant array, were simultaneously disabled by an accidental arrangement of components. Periodic maintenance procedures were incapable of detecting the problem.

Such reports cast a new light on promotional claims about nuclear safety, and also on a question which may come to a vote here in the next few days:

Should Congress amend the Atomic Energy Act to allow nuclear powerplants to start operation before the regular licensing procedures are complete? Or should Congress instead declare a moratorium on nuclear power construction and operation until fundamental safety problems have been resolved?

Members of Congress, nuclear investors, the board members of every electric utility in the country, the Office of Emergency Preparedness, the Department of Defense, and the general public, should become familiar with the AEC's Reactor Operating Experience reports.

Fortunately, a compilation of very recent reactor operating experiences was made in January 1972, by Dr. Henry W. Kendall, who is a high-energy physicist at MIT and a leading member of the Union of Concerned Scientists.

PAPERS PLACED IN THE RECORD

Mr. President, I ask unanimous consent to have his report, entitled "Reactor Accidents: Some Recent Experiences," printed at the end of my remarks, as well as excerpts from a report entitled "Dresden II Incident of June 5, 1970," which appeared in the AEC's journal Nuclear Safety, September-October 1971.

The events described in these papers are fully understandable, even when the technical terms are unfamiliar.

We discover, in the case of the Dresden II incident, that a huge reactor was out of control for 2 hours after one meter gave a false signal and another monitor got its pen stuck. Once control was regained, the plant had to be put out of operation for repairs.

During the accident, radioactive iodine had been released from the nuclear reactor into the drywell area of the containment, and was measured at 100 times above the permissible concentration.

Fortunately, the public was not exposed to radiation, but as Dr. Kendall points out, the Dresden II accident demonstrates vividly how design flaws, sequential instrument and equipment

failures, and human errors, can "chain together" to prolong and amplify the severity of what initially may be a relatively minor incident.

THE ODDS ON IMPOSSIBLE ACCIDENTS

Furthermore, the Dresden II accident should warn us to ignore calculations which purport to show that the chance of a severe nuclear accident is negligible. The calculated probability for the accident which actually did happen at Dresden II would have been so low as to be called negligible or even impossible.

Because of this accident and the repairs it required, some other defects were discovered in the plant. For instance, it was learned that the sequence and starting-times of the Emergency Core Cooling System components were not according to design during the incident, though their actual use was, fortunately, not required.

PROOF OF FALLIBILITY

Anyone who reads these Reactor Operating Experiences will realize what arrogance we suffer from nuclear promoters who claim they can foresee and engineer around all hazardous contingencies.

One of the outstanding admissions about the Dresden II accident was that insufficient thought had been given to the dangers of high-water-level situations; all the attention had been on low-water-level situations.

ON BECOMING HUMAN GUINEA PIGS

I hope that Members of Congress will give serious attention to a moratorium on nuclear power plant operation, as proposed in S. 3223, when they ponder the implications of the closing comment about the Dresden accident, which I quote from the journal Nuclear Safety:

It is unfortunate that procedural, mechanical, and control inadequacies can be recognized only upon the occurrence of some incident that puts them to a real test. The Dresden Two installation, its procedures, and its operating staff have benefited substantially, in the long run, from having suffered and recovered from this particular incident."

There being no objection, the items were ordered to be printed in the RECORD, as follows:

REACTOR ACCIDENTS: SOME RECENT EXPERIENCES BY HENRY W. KENDALL, JANUARY 1972

(The Union of Concerned Scientists, Box 289, MIT Station, Cambridge, Mass. 02139)

I. INTRODUCTION

Evaluating probabilities of having reactor accidents of varying degrees of severity is very difficult. This is a consequence both of lack of a data base of sufficient size, and of the uncertainties associated with making estimates of the likely paths by which accidents can occur.

The following abstracts have been assembled from the AEC publication *Reactor Operating Experiences*, with critical comments added. They are extremely revealing—especially with regard to the frequent divergences between the way things are supposed to go and the way they frequently do go. Several of the incidents might well have developed into far more damaging accidents. Notice that two of them resulted in partial or complete uncovering of a reactor core.

It is clear from these reports that the potential for the development of a major accident on a number of instances has been very great. One particularly disquieting accident and its recent sequela are discussed at considerable length in the last abstract.

The a priori probability of this kind and sequence of events occurring at all, computed by conventional estimation procedure, is so small as to be utterly negligible by any standard. Yet the incident occurred and it was an ominous indication of what may reoccur. No better emphasis of the need for the utmost diligence in assuring reactor safety can be found than in reports of this kind.

II. EXTRACTS FROM REACTOR OPERATING EXPERIENCES (R.O.E.)

ROE 71-3.—During low power operation of a large reactor, the safety rods failed to respond to a reactor SCRAM. A number of safety elements, in redundant array, were simultaneously disabled by an accidental arrangement of components. Periodic maintenance procedures were incapable of detecting the error in the arrangement.

ROE 71-2.—A malfunction in a hydraulic control valve in a main steam bypass valve system of a BWR led to uncovering of the reactor core. This, combined with an excess hydraulic pressure (the consequence of a relief valve set at 4800 psi rather than 3000 psi) caused the transient, during which reactor pressure varied from 1280 to 200 psig. It was fortunate the reactor had been operated at low power for only 28 hours, following a 7-month shutdown, otherwise, there would have been risk of severe accident.

ROE 69-20.—A power outage in a small reactor initiated substantial leakage of the reactor pool water. The report concluded that "This occurrence demonstrates again that an unlikely sequence of events can lead to a potentially serious problem".

ROE 69-10.—During a routine check at a power reactor, abnormal radioactivity was observed in the building water distribution. The presence of radioactivity was confirmed in the plant drinking fountains. The contamination was found to have arisen from an inappropriate cross connect between a 3000 gallon radioactive waste tank and the water system. The report concludes that "The coupling of a contaminated system with a potable water system is considered poor practice in general".

ROE 69-9.—In a discussion of a number of reactor operating errors, the report concludes: "In the recent past, there have been a number of occurrences at reactors where human error resulted in undesirable situations. None of these situations represented a threat to the health and safety of the public. The absence of more serious effects is largely the result of good luck."

ROE 69-8.—"Within the past two years at licensed reactors, a number of instances have occurred wherein important valves failed to operate properly". In one case a core spray test was carried out during reactor shutdown. The entire core spray was inoperative owing to check valves that had been jammed during assembly. It appeared possible that the valves had not been operative for one year. This spray system is a critical component for reactor safety.

ROE 69-4.—"Safe operation of plant compromised". "... human error, displayed by non-adherence to established plant procedures and failure to promptly recognize abnormal plant conditions, resulted in the debarring portion of the occurrence".

ROE 69-2.—"When SCRAM occurred, the reactor operator on duty erred in his assessment of the cause and also in his failure to notify a senior operator of the event (a beam port moderator failure) before attempting to return to full power. Because of previous problems with the servo system, other operators at this facility stated that they, too, would have attributed the SCRAM to a failure in the power control servo. A sticking recorder-pen in the power channel was another fairly common cause of previously unplanned shutdowns. It is apparent that operations permitted by management over extended periods of time with instrumentation ex-

hibiting obvious deficiencies led to complacency on the part of the operators and to possible misinterpretation of information as evidenced. Reliable instrumentation would eliminate this type of fallacy".

ROE 17-3.—Malfunctions of motor-operated valves have occurred recently at several power reactor facilities. These malfunctions were attributed to mechanical or electrical faults or maladjustments of the valve motor-operators. These valves were located in emergency cooling systems.

1. Motor-operated valve did not close completely. The cause of the operational failure was not evident during the previous routine witnessing of the operation of the valve. ... A similar failure had occurred earlier.

2. A valve used in both the feedwater and safety injection systems failed. Investigation revealed that no down-limit switches had been provided for the valves, and a torque-switch failure resulted in searing of the 2½" diameter valve stem.

3. Following a complete loss of off-site power and a reactor SCRAM (with main steam line isolation) at a BWR facility, the motor-operated valve in the condensate return line on the emergency condenser (reactor isolation heat sink) failed to operate as required. Later investigation revealed a tripped thermal overload that prevented operation, a malfunction not immediately evident to the control room operators. The cause of failure of the motor-operated valve (which caused the trip out) could not be determined.

ROE 71-72.—Rupture of Main Steam Safety Valve Pipe Nozzle ... during hot functional testing of a new PWR. A six-inch diameter pipe nozzle welded to a 26-inch O.D. main steam pipe spool piece, failed completely. No nuclear core was in place in the reactor. The extremely loud noise produced by escaping steam rendered communications by the plant intercom system ineffective, and plant operators reported in person to the control room for instructions.

At the time of this report, the cause of the failure had not been determined by post-incident investigation. The stress analysis performed for the failed valve nozzle indicated that the sum of known stresses was significantly less than the yield strength and ultimate strengths of the failed nozzle material. "... it appears that the inlet nozzle may have been marginally designed for a full discharge load condition." ... "The 12 main steam-line safety-valve inlet nozzles were redesigned to provide for a conservative design. ..."

ROE 71-7.—Investigation showed numerous cracks on the inner surface of a 24-inch diameter main reactor coolant line, resulting from thermal fatigue. The cracks were from ¼-inch to 1½-inch long and up to a maximum depth of ¼-inch.

ROE 71-8.—During normal testing at an operating BWR, one of two emergency condenser condensate valves did not open. The valve operator-motor was repaired to eliminate overheating. Four months later it failed again, requiring extensive repairs. After three months more of operation, it failed a third time.

ROE 71-18.—During routine testing of the standby gas treatment system at a BWR facility prior to initial criticality, the inlet valve to one of two filter trains did not open. The malfunction resulted from the presence of an extraneous piece of teflon tape and improper adjustment. Testing later established that operation of valves on both trains proceeded too slowly. The potential significance of these deficiencies is that in certain kinds of accidents, it is essential that the valves operate within specified time limits in order to prevent (radioactive) gas from reaching the building housing the system.

ROE 71-22.—Numerous pneumatically-operated Containment Isolation Valves failed to function properly during a routine con-

tainment isolation test conducted at a PWR facility. It was determined that water, oil, and rust contamination of the air supply for the air-operated components was the principal reason for the failures. A protracted outage of the facility along with a lack of preventive maintenance apparently contributed to the multiple failures. Sixty-three of 191 valves failed to operate on test.

(Abstracted from Nuclear Safety Nov.-Dec. 1971).—Two reactor SCRAMs at a BWR two days apart occurred. The first was initiated by low reactor-vessel water level caused by insufficient feedwater flow. The second occurred when a malfunction closed the turbine control valves. Vessel pressure then exceeded normal from abnormal (sluggish) functioning of part of steam pressure control. Coolant void collapse increased reactivity of reactor and caused high-flux monitor SCRAM.

III. Partial Blowdown Accident at Dresden 2

The AEC series of documents describing reactor accidents entitled *Reactor Operating Experiences* contains one description of a pressure control system malfunction in a large reactor that resulted in partial blowdown of the primary coolant system and overpressure of the containment. The accident is strikingly revealing of the manner in which design flaws, sequential instrumental and equipment failures, and defective reactor operating procedures can chain together to prolong and amplify the severity of what initially may be a relatively minor incident.

In order to clarify the sequence of events, we have inserted parenthetical remarks that include, *inter alia*, some of the post-accident analysis, both from the AEC documents and from a discussion of the accident in *Nuclear Safety*.

The accident occurred in the second generation Boiling Water Reactor, Dresden 2, on June 5, 1970. A similar accident occurred at Dresden III on December 8, 1971. It is described in a preliminary way.

1. A spurious signal in the reactor pressure-control system initiated events.

(This was later found to have originated in a defective wire-wound potentiometer).

2. The spurious signal caused the turbine control valves to open, which in turn caused the steam bypass valve to the main condenser to open.

3. These events in turn initiated a turbine trip-out, which in its turn initiated a reactor SCRAM.

4. The collapse of steam bubbles (void collapse) gave an initial reactor water level drop. This drop automatically initiated an increase in the feedwater system rate.

(Except for the spurious signal, all of this sequence of events was correctly initiated).

5. Immediately both feedwater pumps tripped-off, from too-low suction pressure warning signal.

(It was found later that levels were improperly set, and, post-accident, the trip levels were re-assigned.)

6. One feedwater pump restarted automatically. With this pump operating, and as a result of system depressurization from the open bypass lines, the reactor water-level began rising rapidly.

7. The spurious signal now apparently disappeared, and so the reactor pressure decrease was able to initiate closure of the bypass valves.

8. The reactor water-level again started to decrease rapidly, from void collapse augmented by the injection of subcooled feedwater. The depressurization had greatly lowered the main steam line pressure, so that a low-pressure sensor activated to close the main steam isolation valves. The reactor vessel water level at the time was varying over a wide range.

(The closure was a trip-out, and the valves stayed closed, so as later to prevent a necessary pressure reduction).

9. The reactor water-level now started to

rise, as before, fed by the automatic operation of the one feedwater pump able to function.

10. The water level recorder stuck at the low-level position.

11. The reactor operator reacting to this false low-level indication, switched feed pumps to manual control and maximum flow.

(Other, adjacent gauges gave correct high-level readings. They were disregarded by the operator. Post-accident procedure changes were made to prevent feedwater flow when the level was high. The real difficulties started with the reading of the recorder with the stuck pen.)

12. The actual water level rose, flooding the isolation steam condenser and the main steam lines.

13. After ½ minute, the operator tapped recorder case and recorder came unstuck. Operator set feedwater flow at minimum. The flow should have gone to zero but did not owing to valve leakage. During this time the reactor pressure had dropped to 775 psi and then started to rise again.

14. The operator tried to reduce this potentially hazardous rise by three means:

1. Actuating the isolation condenser.

(This failed to go into service. Moreover, the fact that it was not operating was not discovered for some minutes. It was discovered later to have been deactivated by the high-flow signal from the flooded lines. The flow trip-level for these lines had been set too low by an erroneous technical specification requirement.)

2. Reopening the main steam isolation valves.

(These failed to open as they were not reset from an earlier low-pressure trip-out.)

3. Opening electromagnetic relief valves. (These opened.)

15. The reactor pressure dropped rapidly from 1050 psi to 960 psi, and the operator closed the valves.

16. The reactor pressure rose rapidly as soon as valve closed, (as a result of core decay heat, and water-level rise from feedwater injection).

17. The pressure rise became a pressure surge in the main steam line. The surge opened one safety valve.

(After the accident it was estimated that a water hammer developed in the line because of the presence of water in the steam lines).

(The discharge fluid from this open valve impinged on the lifting levers of two safety valves, cocking them both open. A design mistake made this error possible. These valves remained open throughout the full depressurization and cooldown that followed. The condition was not recognized during the remainder of events).

18. The operator opened another electromagnetic relief valve, causing rapid depressurization.

19. The operator closed the valve, and the pressure started rising rapidly as feedwater flow exceeded the loss through the safety valves.

20. The operator opened the relief valve again, and the pressure rise stopped.

21. The deactivation of the isolation condenser was corrected, and the unit brought into service. Pressure now slowly decreased.

22. Twenty minutes after the initial spurious signal, the reactor water-level was approximately constant with a slow pressure decrease owing to the undiscovered leaks from the partially opened safety valves. The area of concern now became the reactor containment. The primary containment-vessel pressure was increasing.

23. At 2 psi a pressure signal initiated the Emergency Core Cooling System: the reactor building ventilation system was isolated, standby diesel power started, standby gas treatment system was initiated.

(The high pressure emergency coolant system was not available: it had been shut down for repairs following earlier damage. Even if it had been available, it would not have functioned owing to high water-level trip out.)

(The low-pressure cooling injection was inhibited, as reactor pressure was above 350 psi level for automatic lock-out.)

24. The operator manually locked out the low-pressure cooling injection system as the reactor pressure decreased below 350 psi. The containment pressure continued to rise above 5 psi. Pressure information became unavailable.

(Procedures called for initiation of containment sprays in order to reduce containment pressure when pressure exceeded 2 psi. The operators were unable to determine the containment pressure, however, for the only pressure gauge in service was off-scale on its 5 psi range. The operators were unable to determine the cause of the accident from the information available to them at the time. In spite of this the operating staff decided, in violation of procedures, not to employ containment sprays. Two licensed senior reactor engineers concurred in this decision. In retrospect, it was determined that this decision was not warranted in view of lack of available information on conditions of leakage, temperature, pressure, and radioactivity within the containment).

25. Thirty minutes after the spurious signal, the operators decided to vent the containment, and so the drywell was valved open to the standby gas treatment system. The highest drywell temperature measured was 205°F but the recorder then ran out of paper and subsequent temperature history was lost.

(Both the pressure and temperature of the containment exceeded the design values appropriate for the use of the gas treatment system. The gas treatment system was designed to operate at near atmospheric pressure and was tested only to 1.5 psig. It was later determined that the drywell peaked at 20 psig and 320°F. The temperature could have reached 340°F. The design temperature was 281°F).

26. Eighty minutes after the spurious signal, the operators bypassed the isolation signal from drywell overpressure in order to use drywell coolers and to allow the use of the drain sump-pump to clear the drywell into the radwaste system.

(This action was forbidden both by the technical specifications of the AEC Operating License and by applicable plant procedures when drywell pressure exceeded 2 psig. Two licensed engineers concurred in this decision to negate the isolation signal. At this time the containment pressure was still off-scale on the single available gauge).

27. Finally, the "incident" was brought under control, so that, two hours after the spurious signal the drywell pressure fell below 2.2 psig.

Comments.

The comments in quotes are taken from *Nuclear Safety* Vol 12, no 5 Sept., Oct., 1971.

"A review of events indicated that existing procedures were not altogether adequate".

"Much emphasis had been placed on the dangers of allowing the pressure-vessel water level to fall below the top of the fuel, but not enough emphasis was given to the dangers of high-water-level situations. Both the normal and emergency operations procedures were to be reviewed and revised. . . ."

Electric cables were damaged and electric motors developed low resistance problems.

Recovery included replacing some electric cables with improved cables having higher temperature ratings, rerouting other electric cables, drying electric motors, reorienting the discharge direction of safety valves, revising the reactor pressure control system, improv-

ing the capability of the isolation condenser, and revising operating and emergency procedures.

The failures of the electrical cables occurred at temperatures as low as 220°F. Some of the types of cable failure had been enhanced by earlier handling abuse, twisting, and crowding in ducts.

During the shutdown repairs, it was discovered that the sequence and starting times of the emergency-core-cooling-system components were not according to design during the incident, although their actual use was not required.

Release of radioactivity from the reactor core occurred. Samples taken in the dry well indicated about 100 times the permissible concentration of I-131 on June 5 and 82 times on June 6.

It was necessary to increase the gas flow through the standby gas treatment system in order to make the radioiodine concentration decrease rapidly enough. Personnel were able to enter the drywell on June 7.

No member of the general public was exposed to radioactivity. Although the existence of fuel damage from the accident was denied by the reactor owners, the plant was refueled after the accident. It had been refueled two months prior to the accident. No report on the condition of the fuel was made public. It is difficult to understand the radioactivity release in the absence of fuel damage.

This accident displayed an incredible level of irresponsibility and incompetence.

One should recognize that such an unexpected combination of poor design, inadequate maintenance, and defective operating procedures can, in unfortunate circumstances, inject radioactivity into the atmosphere in amounts that can be lethal at dozens, if not close to 100 miles.

Extraordinary efforts have to be made to prevent such an event from occurring, and it is abundantly clear that they have not been made.

IV. THE SECOND PARTIAL BLOWDOWN ACCIDENT AT DRESDEN III

On 8 December 1971 an accident occurred in the Dresden III nuclear power reactor which resulted in a primary containment pressure of 20 psig. Only very scanty information is available.

The accident was initiated by a condensate booster pump trip. This caused loss of the feedwater pumps on low suction pressure. Resulting lowering of the reactor water-level initiated reactor SCRAM. Approximately 50 seconds after the SCRAM, the main steam isolation valves closed on low steam-line pressure. As a consequence of the closure of these valves, the reactor-vessel water-level rose rapidly under control of the feedwater control system and reached the level of the steam lines.

Five minutes after the start of the accident, the primary containment pressure reached 2 psig. This event apparently initiated operation of some of the Emergency Core Cooling Systems. Containment pressure continued to rise to a maximum of 20 psig, then dropped. Torus sprays were placed in service to assist in containment heat removal. Five and three-quarters hours after the start of the accident, the containment pressure was still 3.8 psig.

Union of Concerned Scientists comment

This accident was evidently moving along the same path as the accident of the sister plant Dresden II—the feed-water pump trip-offs, main steam isolation valve closure, automatic reestablishment of uncontrolled feedwater flow with water-level again reaching the main steam lines, what was evidently a reactor vessel depressurization that resulted in automatic initiation of Emergency Core Cooling Systems, and development of a containment pressure that reached the high value of 20 psig.

As some measure of the scale of this pressure it should be noted that the *maximum credible* accident involving complete loss of reactor coolant (following a postulated double ended break of the largest recirculating line in the reactor) the containment pressure is expected to rise only to about 60 psig.

It had been recognized after Dresden II that feedwater control, especially for high water-levels, had previously been inadequate. It is apparent that the lesson was not learned.

We wonder what is required in order for these potentially hazardous reactor installations to be designed, constructed, maintained, and operated in safe and reassuring ways.

[From the Journal Nuclear Safety, September-October 1971]

EXCERPTS FROM "DRESDEN 2 INCIDENT OF JUNE 5, 1970"

(By C. D. Cagle)

Abstract: On June 5, 1970, while Dresden Unit 2 (a second-generation boiling-water reactor) was undergoing power testing and was operating at approximately 75% power [1875 MW(t), 623 MW(e)], a spurious signal in the reactor pressure-control system altered the steam flow to the turbine and caused a turbine trip followed by a reactor scram. Subsequent erratic water-level and pressure control in the reactor vessel, compounded by a stuck indicator pen on a water-level monitor—recorder and inability of the isolation condenser to function as needed, led to discharge of steam and water through safety valves into the reactor dry well. Electric cables were damaged and electric motors developed low-resistance problems. No significant amount of radioactive contamination was discharged to the environment. There was no pressure damage of the reactor vessel or the dry-well containment walls. Recovery included replacing some electric cables with improved cables having higher temperature ratings, rerouting other electric cables, drying electric motors, reorienting the discharge direction of safety valves, revising the reactor pressure-control system, improving the capability of the isolation condenser, and revising operating and emergency procedures. The reactor remained shut down until Aug. 8, 1970. Two to 3 weeks of this downtime was ascribed to refueling.

Dresden Unit 2 is a second-generation 2527-MW(t) [809-MW(e)] General Electric boiling-water reactor (BWR) operated at the Dresden Nuclear Power Plant by the Commonwealth Edison Company, Chicago, Ill. . . .

On June 5, 1970, the reactor was undergoing initial-startup power tests and was operating at approximately 75% power [1875 MW(t), 623 MW(e)] at near equilibrium conditions with full recirculation flow in the core. . . .

ASSESSMENT OF DAMAGE

Damage was confined to equipment within the dry well and was caused by the steam and water discharged through the safety valves. A total of about 30 ft of thermal insulation needed replacement on one main steam line, a feedwater riser, and a recirculation riser. Low resistance was found in five valve motors, a floor-drain pump motor, and a dry-well-cooling blower motor. Seven dry-well electrical penetrations had small leaks through the inboard sides of their double seals. Two of four source-range monitor cables were shorted or open. Four of eight intermediate-range monitor cables had low insulation resistances. Ninety-three local power-range monitor cables were shorted, 10 were open, and 61 were operable. Control cables to the traversing in-core probe indexer were shorted. Two safety valves were jammed partly open owing to their lifting levers hav-

ing been rotated by the steam and water jet from a third safety valve. Minor paint damage occurred on the dry-well wall.

Although the dry-well temperature history during the incident had been lost by lack of instrument chart paper, damage to plastic connector caps and cable insulation indicated (as shown by later tests) that temperatures in excess of 250°F had occurred. Calculations based on steam conditions in the dry well indicated that the maximum atmospheric temperature could have been no higher than 320°F and that the wall temperature was much less. Tempilstik marks on the walls indicated that 200°F was not exceeded. The containment-structure design temperature is 281°F at 0 psig.

The maximum pressure experienced by the pressure vessel and the main steam lines during the incident was determined to be less than the design pressure.

CORRECTIVE ACTIONS

Tests with new samples of local power-range monitor cables revealed that failures of center conductors occurred by buckling at as low as 220°F and that drifting of the center conductor caused shorts at as low as 300°F. This type of failure was enhanced by handling abuse, twisting, and crowding in ducts. Not all tests produced failure, even up to 500°F for 1 hr. Since these cables are vendor-specified for continuous operation at 275°F, the same kind of cable was reinstalled but with great care and with less crowding in ducts.

Source-range and intermediate-range monitor cables were not tested, since it was known that their temperature ratings were less than that of the local power-range monitor cables. They were replaced with a new type of cable having a temperature rating of 350°F. New ducts were provided to separate the source-range and intermediate-range monitor cables from the local power-range monitor cables to avoid crowding.

The traversing in-core-probe-indexer control cables were replaced with new cables rated for 300°F.

The main-steam-line safety valves that lifted were inspected and tested in accordance with the manufacturer's recommended criteria and the ASME and Illinois Boiler Code requirements. Their associated rupture disks were replaced, and the valves were oriented so that damage to other equipment by their discharge would be minimized. Since lifting levers on the valves are not required by the ASME Code, approval to remove them was requested from the Illinois Boiler Board.

Motors on all valves were dried and passed inspection. One of seven dry-well-cooling blower motors had to be replaced. All leaks in the inboard electrical-penetration seals were repaired. The feedwater-control system was improved to minimize control-valve leakage, insensitivity of flow control, and low suction trip caused by pump-runout conditions.

The sequence and starting times of the emergency core-cooling-system components were not according to design during the incident, although their actual use was not required. The system controls were revamped to conform to the design requirements.

The condensate-return-isolation trip point on the isolation condenser was raised from 120 to 300% of normal flow to agree with the design intent and the operating conditions. The Technical Specifications were revised to reflect this change.

The electrohydraulic-control system, in which the spurious signal that triggered the incident originated, was revised to minimize noise pickup. Specifically the malfunctioning device, a potentiometer located at some distance from the pressure-amplifier card, was replaced with a ceramic potentiometer located near the pressure-amplifier card, and some associated terminals were eliminated. Cables from the electrohydraulic-control adjustment panel were rerouted so that the

signal cables were separated from power cables. A control circuit relating the automatic load-following circuits, the recirculation-flow-control system, and the electrohydraulic-control load-frequency-control circuit was rearranged to eliminate the possibility of introducing erroneous voltages to the electrohydraulic-control panel.

PROCEDURE MODIFICATIONS

Although the actions of the operators resulted in a safe and more or less orderly shutdown despite equipment malfunctions, a review of events indicated that the existing procedures were not altogether adequate.

Much emphasis had been placed on the dangers of allowing the pressure-vessel water level to fall below the top of the fuel, but not enough emphasis was given to the dangers of high-water-level situations. Both the normal and emergency operating procedures were to be reviewed and revised to place more emphasis on the seriousness of high-water problems.

The standby gas-treatment system was used as a venting path to reduce the pressure in the dry well when the only knowledge of the pressure there was that it was greater than 5 psig. This was done under closely controlled conditions and through a 2-in. bypass line rather than the 18-in. line provided. The gas-treatment system, however, was designed to operate at near atmospheric pressures and was tested at only 1.5 psig. Therefore it is felt that a safer procedure would have been to reduce the dry-well pressure to below 2 psig by condensing steam with the torus sprays or, if necessary, the dry-well sprays before venting to the gas-treatment system. New procedures and revisions of existing procedures have been issued to establish this requirement.

COMMENTS

If loss of control of the pressure-vessel water level had not occurred during the incident, apparently nothing more than a simple shutdown would have occurred and would have been followed, either then or eventually, by the rewiring of the electrohydraulic-control system to eliminate noise pickup. The real incident began with the loss of water-level control, which was caused by the operator observing a single water-level indicator that had a stuck pen. The incident reports mention revised procedures to better emphasize the problems associated with high water level, but fail to say whether more than one readout instrument has been provided or the reliability of the instruments has been improved. Once the high-water-level condition developed, there seemed to be no clear-cut procedure for reducing the level.

Since it was known that the isolation condenser needed a greater condensate-return-line capability, it seems surprising that no special procedures regarding its use and limitations were observed. After initial actuation of the condenser, several minutes elapsed before the operator was aware that it had almost immediately quit functioning.

Although the instrumentation cables in the dry well have been made less susceptible to moisture and temperature damage, it is not clear that the various electric motors affected by steam and water during the incident have been made less vulnerable. So long as the pressure-vessel safety valves vent directly into the dry well, the operation of electric motors in the dry well must be considered unreliable following pressure-surge incidents.

The loss of the dry-well temperature history during the incident, owing to a single recorder having run out of chart paper, again demonstrates the value of complete redundancy. Although a number of temperature monitors were provided, the use of a single recorder thwarted the value of whatever redundancies might have been supplied in other parts of the temperature-monitoring system.

It is unfortunate that procedural, mechanical, and control inadequacies can be recognized only upon the occurrence of some incident that puts them to a real test. The Dresden 2 installation, its procedures, and its operating staff have benefited substantially, in the long run, from having suffered and recovered from this particular incident.

EDUCATIONAL OPPORTUNITIES FOR WAR VETERANS

Mr. TOWER. Mr. President, the first GI bill was enacted for the veterans of World War II. All of its successors, including the present GI bill for Vietnam era veterans, have a single recurring theme—education is opportunity.

As a nation, we have committed ourselves to assisting our veterans to make a successful readjustment to civilian life. An education, with its attendant opportunities for gainful employment and a full life, is a key to a successful transition.

The GI bill, which provides financial assistance to meet educational costs, is a powerful incentive for a veteran to continue his education. Over 42 percent of the veterans of World War II used their educational benefits. Presently 38 percent of our Vietnam era veterans are using their GI bill. However, even the financial assistance of the GI bill is not sufficient to overcome other obstacles which frustrate the educational goals of many veterans.

Therefore, I note with great pleasure some of the recent developments to remove some of these obstacles. These developments—variations of the traditional mode of financial assistance—promise to enrich the education possibilities for the Vietnam era veteran. I commend them to the attention of my colleagues.

THE BROCK AMENDMENT TO THE HIGHER EDUCATION BILL

The GI bill does not cover the entire cost of the veteran's education. The veteran must demonstrate his commitment by financing the remainder of this educational expense.

The present unemployment situation for Vietnam era veterans is critical. The part-time job market, a primary source of additional financial support for a college student, is slight. In an effort to expand the part-time job market, Senator Brock introduced amendment 972 to S. 659, the higher education bill.

I was pleased to have the opportunity to join Senator Brock as a cosponsor of the work-study for community service learning program. This proposal contains two key proposals. The first provision authorizes \$10 million to be allocated to the States to be distributed to public, private, or nonprofit agencies. These funds will be used to pay the compensation of students employed by these agencies which are providing needed community services. Community services include, but is not limited to, work in such fields as environmental quality, health care, education, public safety, crime prevention and control, housing and neighborhood improvement, and other fields of human betterment and community improvement. These public service jobs are very much in demand by communi-

ties across the Nation. Furthermore, the agencies would make an effort to relate the projects performed by the students to their general academic program and to a comprehensive program for college student services to the community.

The second major provision of amendment 972 is the assurance that the Vietnam era veterans will be given preference. Hence, this amendment will enable veterans who are in need of additional financial support to attend institutions of higher education to obtain earnings from employment. This proposal offers the maximum potential both for effective service to the community and for the enhancement of the educational development of such students.

This amendment was withdrawn upon request of the Senate leadership in order to minimize the difference between the House version and the Senate version of the higher education bill. However, I was extremely pleased that Senator JAVITS gave his assurances that the Senate conferees will work for a work-study program which would emphasize community service and a veterans' preference. I am hopeful that these constructive, positive recommendations will be included in the final version of the higher education bill's work-study program.

THE MED-VET PROJECT

A second type of variation consists of individualized programs being developed by universities and community colleges across the country to meet the educational needs of the veterans. An outstanding example of such a program is Project Med-Vet, initiated by the Dallas County Junior College District—El Centro branch—in Dallas, Tex. With a grant from the Division of Nursing, U.S. Public Health Service, a curriculum has been developed for an associate degree in nursing tailored to the needs of a veteran who has acquired medical training and experience in the armed services.

Each year, over 30,000 men and women leave the military who have received extensive training in an allied health field. These veterans represent a great resource which could be developed to alleviate the critical health manpower shortage in the civilian sector.

Regrettably, the attempts of these veterans to pursue a civilian health career are often discouraged and frustrated. They need certification or licensure from the State agencies to practice. In order to qualify for these examinations, however, the veteran needs an appropriate degree from an accredited institution.

Although many veterans would be willing to take courses to refresh or supplement their training in order to qualify for the State examinations, few schools will recognize and grant credit for their training and experience. Therefore, the education is needlessly repetitive, costly, and time consuming.

Project Med-Vet, however, eliminates this deterrent for the veteran by extensively testing his knowledge and skills. If he can demonstrate competence in a subject matter, he is given credit for the course and passed out of it. Thereby, many basic courses are bypassed. The student can emphasize those areas of training in which he needs additional

help, and still reduce the time necessary to obtain a degree.

In addition to this challenge system, special seminars are conducted to explore the differences in the practice of military and civilian medicine.

The first class of 12 students graduated in December. Eleven are presently working in the Dallas area and one is working in New Mexico. These students will sit for their State licensure examination in April. There are currently 38 students in the course of study.

I commend El Centro and the very capable leadership of Dr. Bill J. Priest, chancellor, and Dr. Robert Leo, director of special projects, for this exciting innovation in the education of veterans and allied health personnel.

A COMMUNITY COLLEGE FOR THE AIR FORCE

Although a serviceman receives excellent training and experience in many technical fields, he often finds it difficult to transfer this knowledge into a meaningful record for employment and education purposes. A most innovative and challenging concept—A Community College for the Air Force—is being developed by Lt. Gen. George B. Simler. I ask unanimous consent that the text of an article in the Air Force Magazine, written by Capt. John T. Correll, USAF, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A COMMUNITY COLLEGE FOR THE AIR FORCE (By Capt. John T. Correll, USAF)

RANDOLPH AFB, TEX.—In line with new trends in American vocational education, the Air Force plans to activate its own community college here this spring.

It will be a different kind of school, to be called the Community College of the Air Force. There are no classrooms at the home "campus" in San Antonio. Its initial task will be to provide the airman a transcript of his in-service education and training in a form acceptable to civilian schools and employers. At the same time, the Air Force is proceeding toward full civilian accreditation for its technical training centers. Provided this happens, the Community College will grow to a consortium of accredited schools—hopefully within two years.

The Community College was created to serve the unique needs of USAF airmen, whose training now receives limited recognition in the civilian world, and who often have difficulty in consolidating the academic credits they earn while in uniform.

"I'm convinced that this is one of the most progressive steps the Air Force has taken in the interests of its people and in the interest of the country, from the national resource standpoint, in twenty-five years," said Lt. Gen. George B. Simler, Commander of the Air Training Command, of which the Community College will be a part.

Col. John L. Phipps, ground-level planner in the Community College venture, and who holds a Ph.D. in Education, will serve as the institution's first president.

"What we're doing is not in isolation," Colonel Phipps observed. "We're a part, really, of a larger movement in American education as a whole."

He cites a number of recent attempts to recognize educational experience outside the traditional model. These include establishing a University Without Walls for the Department of Housing and Urban Development, in which unconventional course material can be accredited, and the practice of the New York Board of Regents in granting academic

credit on the basis of examinations to any student, registered or not.

The Community College will issue a transcript, with credits from both its own accredited technical schools and college-level courses the airman took in off-duty time.

"We are starting out with the objective of giving these young men credit for the things that they achieve in the technical training area while they're in the service," General Simler told Air Force Magazine. "In the initial stages, we're going to work very closely with the academic institutions that are interested in working with us through the various accrediting associations."

The idea for a Community College of the Air Force was born in ATC, but planners here soon sought the counsel of two other commands—Air University and the Air Force Academy—both of which had extensive experience in higher education and long association with the civilian academic world. In Lt. Gen. Albert P. Clark of the Academy and Lt. Gen. Alvan C. Gillem II of Air University, General Simler found enthusiastic colleagues. Together, they proposed the concept to the Pentagon, where both the need for and the value of a Community College of the Air Force were quickly recognized.

Vocational training is the Air Force's biggest recruiting incentive. Human Resources Laboratory researchers discovered that many young people enlisted because they wanted training and a chance to improve their skills.

The Air Force provides that kind of training. Its courses—ninety percent of which teach skills that can be used in civilian occupations—are equal or superior to the material taught in the top vocational and technical schools. Nevertheless, a veteran's training is very difficult to certify in a way that is meaningful to anyone outside the Air Force.

In addition, some airmen have accumulated many hours of college credits on their own time, seldom leading up to anything because they didn't stay in one place long enough to graduate, and had trouble transferring their work to a new school when they moved.

"In my opinion," General Simler declared, "there is a big deficiency in the recognition of the kinds of technical training we do in the Air Force. The employer may or may not have any knowledge of the degree of that training, the depth of it, the value of it, or the academic hours that went into making this man a qualified technician. So what we're attempting to do in this idea of a Community College of the Air Force is pull all that together."

As soon as the Community College data system is built and Air Force course content is translated into civilian language and semester hours—probably about the midsummer 1973—the Community College of the Air Force will begin issuing transcripts to ATC-trained airmen. (At present, the planners aren't sure just how far back in history they can go with the transcript service, but say they plan to serve as many people as possible.)

Such a transcript will be valuable to a prospective employer as well as to the airman.

"I anticipate that the transcript will be favorably received, because it's going to give an employer a definitive record of what this young man has accomplished," General Simler continued. "It will not only contain information on how he did in his training, but will include how he did subsequent to that in on-the-job training and in the Weighted Airman Promotion System. It will also contain any other courses he has been able to take from civilian institutions. The employer will have a very clear record of what this fellow has achieved—probably a better record from the standpoint of the personnel man who's going to hire him than anything else

he'll get from any other candidate. It'll be a real pedigree."

One of the pillars on which the Community College of the Air Force is built is the Utah project, carried out by the Air Force Association's Aerospace Education Foundation and the U.S. Office of Education (see page 69).

In 1967, Utah placed three Air Force courses—in their original form—in civilian high schools, vocational schools, and a college. The Air Force materials proved as efficient and more popular than the previously used material. This prompted a seminal question: If ATC courses are taught in college for college credit, then why not arrange for direct college credit for Air Force people when they take these courses in the Air Force?

The breakthrough came when ATC's Sheppard Technical Training Center at Wichita Falls, Tex., was accepted last July as an affiliate of the Southern Association of Colleges and Schools. This is the first step toward accreditation, which can be conferred by a vote of member schools following a year of self-study by an affiliate to document the manner in which it meets Association standards.

General Simler instructed other ATC schools to take similar initiatives and seek affiliate status from the accrediting agency in their areas. The tech schools at Keesler AFB, Miss., and Lackland AFB, Tex., as well as the Security Service's school at Goodfellow AFB, Tex., have since affiliated with the Southern Association of Colleges and Schools. ATC's two other technical training centers—at Chanute AFB, Ill., and Lowry AFB, Colo.—are in the area of the North Central Association, which does not have an affiliation step in its accrediting process. Both Chanute and Lowry, however, are working on self studies to present to the Association.

Accreditation, ATC points out, is highly desirable because it provides assurance to institutions of higher education that an independent educational accrediting association has conducted a thorough review of Air Force technical training and found it to meet comprehensive standards.

At present, an individual who has received Air Force training can ask a college or university to give him credit for that training. The American Council on Education provides a listing of most military courses, and, where appropriate, recommends that credit be given for those courses. There is no requirement, however, that institutions accept military training for credit, and accreditation is expected to increase the likelihood that credit will be given.

"We're going to get some very serious questions about the Community College of the Air Force and its purpose," General Simler predicted. "We'll be tasked to justify why we should be accredited, I'm sure, and we feel that we have all the justification that we need, and that we can support our position."

Acceptance by civilian educators is especially important.

"We work hand in glove with the academic civilian world," General Simler asserted. "To this point in time, they have been most cooperative and most receptive."

Community College planners have been advised all along by civilian educators, and the school's advisory committee will include a number of educators, as well as Air Force officials and people from other federal agencies.

"The key idea behind the Community College of the Air Force concept," stresses Colonel Phipps, "is that existing Air Force technical training programs can be documented as formal education experiences. These experiences—supplemented by further formal instruction and experience—can be folded to meet the requirements of licensing and certifying agencies and educational institutions."

In a forthcoming article for ATC's *Instructor Journal*, Colonel Phipps wrote: "The importance of degrees, licenses, certificates, and other symbols of qualification in today's society cannot be overemphasized. The world of work has been called a 'certified meritocracy'—a world in which doors open only to those who have the 'papers' attesting to their achievements. Perhaps that is too Orwellian a view, but few would argue that diplomas often sharply separate the socioeconomic status of some members of our society from others who are equally deserving, but lack formal recognition of their qualifications."

Parallel to the effort to accredit ATC tech schools, the physician's assistant training program at Sheppard is already accredited by the American Medical Association. Graduates can be licensed in several states.

On the surface, it would seem that accrediting and certifying an airman's skills to make him more competitive in the job market would work to the detriment of Air Force retention. General Simler doesn't foresee any great problem.

"First of all," he said, "I think we have an obligation to Americans who come into the Air Force to provide them this kind of service, regardless of whether they stay in the Air Force or return to civilian life. I think we have an obligation to the industry of the United States to provide them with a man who has recognized skills that are usable by them."

"I think we can compete in the numbers of people we take in annually to retain a sufficient number for our own purposes. We should have a flow of people into and out of the Air Force on their initial enlistment. We don't want to retain everybody. It just wouldn't be healthy for us."

(General Simler's comments on retention carry special credibility. Through December, his Air Training Command led the entire Air Force in retention rates for the year, having reenlisted 46.7 percent of its first-term airmen who were eligible to reenlist.)

There are benefits to the career man, too, and they go beyond the increased prestige accruing to him as a certified master of his trade. He will be in an improved position to seek post-service employment.

"He isn't going to be in the Air Force forever," General Simler pointed out. "If a youngster who comes to us at seventeen years of age leaves after twenty years of service, he's only thirty-seven years old."

The President's National Advisory Council on Vocational Education has expressed keen interest in the Community College of the Air Force and, along with representatives of AFA's Aerospace Education Foundation, will visit San Antonio this spring for a firsthand look.

The benefit to society in general will be significant. Each year, more than 100,000 veterans leave the Air Force, trained for work in civilian occupations. With the coming of the Community College of the Air Force, they will represent a skilled manpower resource that can be drawn upon much more readily than is now possible.

"We haven't run into any problems that we haven't been able to resolve," General Simler said. "We've been able to justify our position as we moved along, each step of the way—and I think this will probably maintain itself. The only thing that remains is a lot of hard work."

EXPERTS OPPOSE VALUE-ADDED TAX

Mr. PROXMIRE. Mr. President, yesterday the Joint Economic Committee began hearings on the value-added tax and on alternative methods of raising the needed additional revenues for meet-

ing the educational, health, and basic income distribution requirements of the Nation. It is clear that by the mid-1970's the Federal Government will need at least extra revenues of \$50-\$100 billion to finance vast unmet needs, especially at the State and local level.

Some of these revenues can come from improvement or elimination of existing Federal programs. But a large part will necessarily have to come from additional Federal taxes. The administration has narrowly focused its attention on the possibilities of instituting a value-added tax to finance new initiatives. Yet this tax seems to perpetuate and extend the inequities that already exist in our tax system.

That the value-added tax is a regressive tax is generally recognized; this was corroborated by the witnesses that appeared before the committee yesterday. Among the three witnesses who testified yesterday, two were flatly opposed to the tax and the other gave it only qualified support. Prof. John Due stressed that the tax will place the greatest burden on lower income groups. He emphasized that the tax:

Will be distributed in a relatively regressive fashion because lower income groups spend higher percentages of their incomes on taxable goods than do persons in the higher income groups. Even more serious than the relative regressivity, which can be offset to some extent by the progressivity of the income tax, is the absolute burden on the lowest income groups, already living below a minimum subsistence budget.

These sentiments were echoed by Mr. Sheldon Cohen, former Commissioner of the Internal Revenue Service, who also brought out the inflationary aspects of a tax on value added. Mr. Cohen pointed out that:

Imposition of a value-added tax generally results in increasing the cost of consumer items. Thus, the cost of living rises—generally, very sharply. Inflation in the United States is a serious and persistent problem at the moment and for the foreseeable future. A value-added tax would only add fuel to the fire, making more difficult the job of moderating inflationary pressures in the economy.

Mr. President, I think that this is a quite important point that has been ignored in the discussion of value-added tax thus far. When I questioned the witnesses they suggested that imposition of a 5-percent VAT might raise consumer prices in excess of 4 or 5 percent.

Finally, one witness did give the value-added tax his qualified support. Prof. Charles McClure, of Rice University, would endorse VAT if the income and corporation income taxes were substantially reformed. He indicated that:

Ideally, imposition of a tax on value added would occur in the context of integration of the personal and corporate income taxes, reform of the newly integrated income tax, and initiation of low income relief. A less ambitious, but acceptable, program would replace income tax integration with reform of capital gains taxation. Failing this, the VAT should not be substituted for the corporation income tax.

These witnesses raised serious questions about the equity, efficiency of operation, cost of living, and balance-of-payment aspects of the value-added tax. Mr. President, I ask unanimous consent that the

excellent papers presented to the Joint Economic Committee follow the text of my remarks in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

STATEMENT OF SHELDON S. COHEN, BEFORE THE JOINT ECONOMIC COMMITTEE, MARCH 21, 1972

Mr. Chairman and Members of the Committee: My name is Sheldon S. Cohen. I am a partner in the law firm of Cohen and Uretz in Washington, D.C. During the period December, 1964, through January, 1969, I served as Commissioner of Internal Revenue.

I appreciate very much your invitation to appear today to present my personal views concerning proposals that a value-added tax be enacted to provide a new source of Federal revenues.

At a time when all levels of government—Federal, State, and local—are hard pressed to raise funds needed to finance vitally needed public services and programs, we must search diligently for means of raising additional revenues efficiently and equitably, whether from existing taxes or new ones. Any serious proposal to raise revenue must be judged carefully in the light of these standards and on its merits.

It is important, therefore, that the issues presented in examining the desirability and feasibility of a value-added tax be put in proper perspective.

There are some who would have the public believe that a value-added tax is the way—indeed, the only way—to relief from the increasing burden of local property taxes. That is simply not true. Whether property tax relief is needed or desirable is an independent question. If careful analysis demonstrates that less reliance should be placed on local real estate taxes as a source of local funding, there are many alternatives, only one of which is a value-added tax, that must be examined to find the best solution—and not just an expedient answer.

The value-added tax must, therefore, withstand scrutiny on its own to determine whether it has the potential of meeting the dual tests of efficiency and equity better than other means at our disposal.

The essence of a value-added tax system is that at each stage of production and distribution a tax is imposed at a given rate on the value added to the product or service. Although there are various ways in which the tax may be structured, it is generally accepted that in most cases the tax is passed along to the ultimate consumer in the form of a price increase at least equal to the aggregate tax which the product or service bears. The tax, therefore, is a tax on consumption—how much a person spends—rather than a tax on income—how much a person earns.

A consumption tax has the inherent characteristic of regressivity—lower income groups pay proportionately greater taxes than those with higher incomes, since a greater portion of their earnings are expended for living costs. Although there may be devices which can moderate the severity of the regression, a viable system remains, nevertheless, dominantly regressive. Although proponents of the tax suggest it is a simple tax to administer, attempts to reduce regressivity will necessarily increase the complexity and administrative difficulties of the system, both for the public and the Government. A value-added tax studded with the requisite exemptions and exclusions merely to remove its most serious regressive impact, will present intensely serious administrative problems.

Clearly, the income tax is more equitable and fair, since it is based on ability to pay—rather than on the need to consume. If the income tax system were presently structured to yield fully its revenue potential with rea-

sonable progressivity in fact, other alternatives for the raising of revenues might have to be considered. But, the income tax system is not operating in accord with its potential. The system is overloaded with unwise and unneeded tax preferences which narrow the base and permit many with large incomes to avoid paying their fair share. Large amounts of revenue can be raised now by meaningful tax reform—and at the same time we can restore public confidence in the fairness of the system. Given these circumstances, I see no justification for enactment of a value-added tax which would only shift more of the tax burden to low and middle income families.

These considerations aside, the case for a value-added tax is still not persuasive.

Proponents of the tax point to its use in European countries as demonstrative of its success and the need for us to follow their lead in order to more fully integrate our system of taxation with theirs. But the European experience generally has been quite different from ours. The level of compliance with the income tax, indeed, any tax, in Europe has been relatively low, compelling those countries to find alternatives—such as value-added taxes—which, though less equitable, are more productive of revenue. That has not been the case in the United States where we have an enviable record of an overall high degree of compliance with the progressive income tax system. Many a tax official from abroad has marveled at our system and expressed to me his keen desire that his own system could function as well.

Moreover, in some countries, such as Sweden, the adoption of the value-added tax was accompanied by a repeal of the retail sales tax—the substitution of one form of consumption tax for another—not the substitution of a consumption tax for an efficient income tax.

I am also unconvinced that adoption of a value-added tax would have any significant beneficial effects insofar as foreign trade or balance of payments problems are concerned. The fact that a value-added tax is adopted which, as an indirect tax, may be rebated to exporters under the General Agreement on Tariffs and Trade, does not improve the existing situation. It is only where a value-added tax is substituted for a non-refundable direct tax that a positive impact on pricing of export articles in foreign markets occurs. Even if the enactment of a value-added tax were accompanied by a concurrent reduction in some other tax, such as the property tax, the effect is likely to be so modest as to have little or no impact on our trade position. For example, the amount of property taxes borne by business as a percentage of sales is so slight, that even if property taxes were repealed completely in favor of a value-added tax, there would likely be no significant impact on the pricing of export goods. But even were we to assume that a convincing case can be made that a value-added tax would have a favorable effect on our foreign trade of meaningful proportions, the argument is still not won. The anticipated benefit still must stand the test of comparison with its cost, its effect on various segments of society, and the degree to which its regressive characteristics can be tolerated as a matter of tax justice. The benefits may well not be worth the burdens.

Another serious aspect of a value-added tax is its adverse effect on inflation. Imposition of a value-added tax generally results in increasing the cost of consumer items. Thus, the cost of living rises—generally, very sharply.

European countries experienced significant inflationary pressures following adoption of value-added taxes—with prices frequently rising by more than the amount of the tax, as some businesses used the tax as a device for passing on general price increases. Since

the tax also results in increased cost of operation and investment, as a practical matter prices are likely to increase in amounts greater than the amount of the tax itself.

Inflation in the United States is a serious and persistent problem at the moment and for the foreseeable future. A value-added tax would only add fuel to the fire, making more difficult the job of moderating inflationary pressures in the economy.

Many businesses, as well as consumers, may also be adversely affected by a value-added tax. The tax would involve new and expanded administrative costs in order to maintain the records needed for compliance. More importantly, some business groups would be caught in a squeeze which would have significant adverse financial effects.

Although it is generally assumed that the tax would be passed on in the form of higher prices to consumers, that may well not be the universal experience. The rate of tax would be very high in relation to profits in industries which have high volume and low percentage yields. For example, assume a business has an annual volume of \$10 million and earns a 1 percent net profit of \$100,000. A three percent value-added tax could amount to as much as \$300,000. If by reason of competitive conditions, or otherwise, any portion of that tax is not passed on to consumers, the company's profit picture would be altered drastically—to a much greater degree than would result from a significant rise in corporate income tax rates.

The value-added tax has serious drawbacks—for consumers, for business, and for our economy. I believe we ought to be focusing our efforts on strengthening our income tax system, which can raise revenues more fairly and efficiently. In summary, the United States in the 1970's is neither the time nor the place for a value-added tax.

STATEMENT ON THE PROPOSAL FOR A FEDERAL VALUE ADDED TAX TO PROVIDE FUNDS TO REPLACE LOCAL PROPERTY TAXES FOR THE FINANCING OF EDUCATION

(By John F. Due, professor of economics and chairman of the department, University of Illinois, Urbana)

Reform of the methods of financing education is long overdue and action to reform the system is being prompted by recent court decisions. There are a number of alternative avenues of reform: replacement of the local property taxes by a uniform state property tax; increases in state income and sales taxes to provide the necessary funds; grants of funds out of Federal income tax revenues; and the recent suggestion by the Administration, now under study by the Advisory Commission on Intergovernmental Relations, for a Federal value added tax to raise money for this purpose.

While the need for reform is unquestioned, there are a number of serious objections to the value added tax proposals:

Equity—A value added tax is simply a form of sales tax, equivalent in base and yield at a given rate to a retail sales tax, differing only in that the tax is collected in increments from each firm in production and distribution channels on the value added by each firm, rather than entirely from the retailer on the final selling price at retail. The sum of the values added at each stage in production and distribution of course equals the retail selling price. The presumption is that the value added tax will shift forward to the final consumer, with some deviations, in the same pattern as a retail sales tax. To the extent that it does not, it rests in an inequitable and capricious fashion on the owners of various businesses and their employees.

Under the assumption of forward shifting of the value added tax, the tax will be distributed in a relatively regressive fashion because lower income groups spend higher

percentages of their incomes on taxable goods than do persons in the higher income groups. Even more serious than the relative regressivity, which can be offset to some extent by the progressivity of the income tax, is the absolute burden on the lowest income groups, already living below a minimum subsistence budget.

The regressivity and the absolute burden on the poor can be lessened by exemption of food from the value added tax. But this approach is highly unsatisfactory in many respects. Exemption favors those persons who spend relatively high percentages of their income on luxury foods. It unnecessarily exempts food expenditures of the higher income groups and causes a much greater reduction in tax revenue than is necessary to accomplish the objectives. The exemption does not free the lowest income groups from their entire tax burden. It materially complicates the tasks of retailers in applying the tax and of auditors in checking upon the accuracy of returns.

A much more satisfactory approach is the provision of a credit against income tax representing value added tax paid on minimum necessary purchases, with refund for those persons having no income tax liability. This system is used with the sales taxes in Indiana, Colorado, and several other states. Compared to food exemption, this approach causes less loss in revenue and is much less discriminatory against various families, while relieving the very poor of all tax liability. It causes far fewer administrative and compliance complications than food exemption. But experience in the states does show two limitations. A substantial number of the poor do not file for their refunds, and thus the intent of the program is not fully attained. Secondly, there is also some multiple filing, a person obtaining several refunds.

Even with food exemption or a credit against income tax, however, the value added tax suffers from several limitations on equity grounds. The tax cannot be made progressive as can the income tax. The tax favors those families at each income level that deliberately spend relatively low percentages of their incomes. No adjustment for family circumstances is possible, except crudely under the credit against income tax system.

Despite popular views to the contrary, the property tax is not regressive except at the very low and very high income groups.¹

Certainly the value added tax provides no improvement over the property tax in terms of overall distributional patterns. Much of the property tax—an estimated 40 percent—rests on land. One of the few subjects on which economists agree is that a tax on land values is one of the least objectionable of all forms of taxation and has much merit from an equity standpoint. Reduction in taxes on land will result in increases in land values and a bonus to large landowners. If the Federal government is to increase its contribution for schools, the obvious solution, from the standpoint of equity, is to improve the structure of the income tax, close additional loopholes, and if necessary increase the rate. We have just witnessed substantial reductions in the income tax; the obvious solution to obtain more revenue is to call upon an improved income tax to supply it, not to add a new tax which on equity grounds is inevitably an inferior levy.

Fiscal Policy Effects. A Federal value added tax should undoubtedly have greater adverse effect on employment than other forms of tax, because of its greater effect in restricting consumption, per dollar of revenue. The tax hits more heavily those families consuming all or most of their income and gives some incentive to curtail consumption. While

in theory this effect could be offset by other fiscal or monetary policies, in fact such policies do not appear easy to implement or fully effective.

At the same time, the value added tax would add to inflationary pressures by raising the cost of living. This reaction would likely more than offset the anti-inflationary effect of the tax in reducing consumption. While virtually all taxes may have some effect in leading to demands for higher wages, a levy that directly increases the cost of living index is likely to have the greatest influence, per dollar of tax revenue.

Intergovernmental Relations. Establishment of a Federal value added tax would infringe upon the states' major revenue source, the retail sales tax, now used in 45 states and yielding 30% of state tax revenues. The states are restricted in the income tax field by the substantial Federal use; their one major autonomous source is the sales tax. Without question establishment of the Federal value added tax would restrict the ability of the states to gain additional revenue from this field.

Operational Complications. A Federal value added tax would create a vast new complex of tasks for business firms of all types and necessitate a major new enforcement and audit staff for the Internal Revenue Service. The number of taxpaying firms would be in the neighborhood of 5 million (with farmers excluded from the tax).² These firms would have to keep records and file returns for the new tax in addition to the ones now required of them for the state retail sales taxes. For smaller businesses, the very concept of the value added tax would create complications, at least initially.

The value added tax, under the usual tax credit system, as used in Europe, works most smoothly when there are no exemptions of types of taxpayers, since the tax paid by one firm constitutes a deduction for another. Each firm calculates tax by subtracting the tax paid on its purchases from the figure obtained by applying the tax rate to its taxable sales. Whenever this chain is broken, special techniques are required to avoid multiple taxation by exempting sales by vendors to exempt firms or granting refunds to firms that have paid tax on purchases but are not registered vendors on their sales. To make the three million farmers in the United States subject to the tax would add greatly to compliance and enforcement problems. But if they are exempt, either the sales to them must be specifically exempted, a refund provided to them for tax paid on purchases, or the price of the products purchased from them assumed to contain a certain tax element which the purchasers, if registered firms, can deduct against their tax liability. Any of the approaches creates major complications. Commodity exemptions create more problems than under retail sales taxes since the exemption must carry through several production and distribution stages. Other exemptions are likely to be made for various social and economic reasons: medical care, hospital service, urban transport. The concept of value added is not clearcut or easily defined with banks and insurance companies. On the whole the value added tax is not nearly as simple a levy as is sometimes argued.

These complications suggest that if the Federal government were to move into the sales tax field, it should use the retail sales tax form instead. This is a simple levy familiar to most business firms in the United States, and Federal operation could be coordinated with the state sales taxes. Only firms selling at retail are vendors and the number of taxpaying firms is therefore somewhat less. The only potential advantage of

¹ This is shown in studies by the Advisory Commission on Intergovernmental Relations.

² There are 4.1 million firms now registered under the state sales taxes.

the value added tax over the retail sales tax is the possible greater ease in excluding all producers goods from the tax if desired. Firms can be permitted to deduct tax paid on all of their purchases and not just those of materials and parts, and check needs to be made only on the firm itself. With the retail sales tax the exemption applies to the sale of producers goods by the suppliers and therefore check must be made upon both supplier and purchaser. This argument has been stressed by Professors Ann Friedlaender and Carl Shoup.⁵ But the argument can easily be exaggerated. Most sales of producers goods can be excluded under retail sales taxes if desired; the states have never actually systematically sought to do so.

The other arguments for the value added form of sales tax, that it lessens evasion because much of the tax is collected at the manufacturing and wholesale levels where firms are larger, and that it provides automatic cross check since tax deducted by merit in the United States, in view of the ability to enforce retail sales taxes with little evasion. This argument is highly significant in countries that cannot collect heavy taxes from retailers.

THE FOREIGN TRADE QUESTION

The argument is often advanced that use of a value added tax would aid the position of American producers competing in foreign markets, since the tax would be rebated on exports. As a replacement for the property tax, there would be virtually no net advantage, except possibly for a few property intensive firms now heavily burdened by local property taxes not refunded at export. But for most manufacturers, property taxes constitute a negligible element in the costs of goods they are selling for export. As compared to a personal income tax there is no advantage whatever since the income tax does not affect export prices.

The personal income tax may, it is true, result in higher wage demands, but the value added tax also has this effect, almost certainly of greater magnitude per dollar of revenue.

Even as compared to the corporate income tax, the value added tax offers little advantage, even though the value added tax can be refunded on exports while the corporation income tax cannot. The inability to refund the corporate income tax is relevant for our exports only if the corporate income tax is actually reflected in higher prices of commodities exported. There is no clearcut evidence that the corporate tax is even reflected in the prices of domestic goods, despite the vehement insistence of many persons that it is; even if it is, the tax is not necessarily reflected in export prices. But more significantly, our major competitors in world markets have corporate income taxes comparable to ours in height; our producers are under no net competitive disadvantage. The European value added taxes were introduced to replace the turnover form of sales tax, not income, property, or other levies.

In general, no field of taxation has seen so much nonsensical discussion than the value added tax. To some persons, the mere act of levying a value added tax and then refunding it on exports, even without elimination of any other tax, would aid our exports; this is ridiculous nonsense. To others we must have a value added tax because other countries are using one—there is a frantic running scared—we have to use it because they are using it—copycat bandwagon attitude on the part of many people who should know better. In reality, much

of the support for the tax comes from persons who are primarily interested in reducing the overall progressivity of the tax structure; the term "value added tax" smells sweeter, they hope, than the term "sales tax." The dogged insistence of a few persons that a value added tax is not a sales tax plays into their hands. The property tax is notoriously unpopular; to the supporters of a federal sales tax, the school finance crisis offers the golden opportunity to introduce the levy by tying it to elimination of a highly unpopular levy. There are far simpler and more attractive methods to meet the need to eliminate the local property tax for financing education: statewide property taxes, higher state sales and income taxes; a more effectively progressive Federal income tax.

STATEMENT TO THE JOINT ECONOMIC COMMITTEE OF THE CONGRESS OF THE UNITED STATES ON VALUE ADDED TAXATION

(By Charles E. McClure, Jr., associate professor of economics, Rice University, March 21, 1972)

Like most questions of tax policy, whether the United States should adopt a federal tax on value added (TVA) has no simple answer. The verdict depends upon the alternative sources of revenue available and the context in which the decision must be made. A choice that would be acceptable under one set of circumstances might be totally unacceptable under another. In my testimony today I want to examine two widely discussed alternatives to imposition of a federal tax on value added, with special emphasis upon the historical and institutional context in which we are facing the issue.

I. Substituting TVA for the Corporation Income Tax

Until recently, the tax on value added was discussed most commonly as a replacement for part or all of the corporation income tax. Advocates of the switch to TVA ordinarily predicated their case primarily upon hoped-for improvements in the balance of payments, with an occasional nod to the expected growth effects and neutrality of the tax on value added.

The balance of payments argument has ranged from the simplistic, but unconvincing, truism that under the General Agreement on Tariffs and Trade border tax adjustments (export rebates and compensating import duties) are allowed for the TVA, but not for the corporation income tax, to more sophisticated analysis involving assumptions about the shifting and incidence of the two taxes. The growth argument relies upon the assumption that corporate saving and investment would rise substantially if the TVA replaced the corporation income tax. Finally, the neutrality of the ideal TVA contrasts sharply with the distinct non-neutrality of the corporation income tax. The latter tax discriminates between the incorporated and unincorporated sectors of the economy, against equity financing and the use of capital in the incorporated sector, and between industries.

Opponents of the substitution of the tax on value added for the corporation income tax have tended to play down the supposed advantages of such a move and have questioned whether the advantages, even if real, would be worth the cost in terms of equity. First, they have questioned both the likelihood that the balance of payments would benefit much from the shift and the desirability of predicated important decisions of internal tax policy upon their presumed balance of payments implications. I share both these doubts, the second especially strongly in the light of the recent realignment of exchange rates.

There is little doubt that substituting a TVA for the corporation income tax would increase saving and investment significantly, provided the corporation tax is not shifted. Of course, if it is shifted, little effect is to be

expected. But one must ask whether further stimulus to corporate saving and investment is needed in the wake of the recently enacted ADR system of depreciation for tax purposes and restoration of the investment tax credit. Moreover, even if more stimulus to saving and investment is needed, there are other, and perhaps better, ways of providing it than through substitution of a TVA for the corporation tax. Finally, one could question the wisdom of creating a huge flow of corporate saving that might go uninvested if business confidence were weak, contributing to deflationary pressures.

Opponents of the tax on value added are also usually willing to admit the superiority of the TVA on neutrality grounds, with several provisos. First, elimination of the corporation income tax would create an enormous tax haven in retained earnings. Besides having obvious implications for tax equity, this tax haven would itself distort economic decisions in important new ways. Second, it is virtually certain that any tax on value added would contain exemptions for administratively hard-to-tax items, and it might well also contain exemptions to reduce the regressivity of the value added tax. Thus it is an open question whether the gain in economic efficiency resulting from the tax substitution would be great. This is an issue which deserves further exploration.

The heavy artillery in the case against substituting a tax on value added for the corporation income tax is the regressivity of the TVA. Like any general sales tax, the TVA takes a decreasing share of income as income rises. Thus it imposes a proportionately heavier burden on low income families than on high income families. If the corporation tax is borne by recipients of profit income, as many economists think, the tax substitution under examination would represent a substantial shift toward regressivity—a shift which many see as unconscionable. Whether this equity effect should outweigh the supposed advantages of the TVA balance of payments, growth, and neutrality grounds, as opponents of the TVA contend, involves important value judgements about which opinions can reasonably differ, though I personally think it should. Of course, if the corporation tax is shifted, as some economists and most businessmen think, there is somewhat less reason to oppose the change on equity grounds, but there is also less gain to be expected on the growth side. Unfortunately, we do not know the incidence of the corporation income tax, and are not likely to achieve early agreement on it.

On balance, I would oppose the simple substitution of the TVA for the corporation income tax, even though I am no fan of the latter tax. The balance of payments effects probably would not be large, and should not weigh heavily in the decision in any case. The growth effects, while potentially important, can be achieved in other ways, and should be viewed as less important than before the Nixon administration's measures to stimulate investment. The TVA is probably more nearly neutral than the corporation income tax, though even it is likely to be far from completely neutral. But most important, I question the advisability of the substitution because it would leave the United States with an undesirable combination of income and consumption taxation.

I do not object in principle to a dual federal system of income and consumption taxes, as I shall make clear in a moment. But I do object strongly to the kind of dual system that the simple tax substitution would produce. The consumption tax portion would not necessarily be at fault, provided its regressivity at the lower end of the income scale were relieved. (I should hope that this relief would be provided directly through refundable tax credits or low income relief, rather than by exempting "necessities" (see below), and that administrative exemptions

⁵ Ann F. Friedlaender, "Indirect Taxes and Relative Prices", *Quarterly Journal of Economics*, Vol. 81 (Feb. 1967), pp. 125-39; Carl Shoup, "Experience with the Value Added Tax in Denmark and Prospects in Sweden", *Finanzarchiv*, Vol. 28 (March, 1969), pp. 236-52.

would be kept to a minimum, in order to preserve the neutrality of the tax.)

The fault, rather, would lie in the form of income taxation that would remain beside the TVA. The portion of income attributable to individuals taking the form of retained earnings of corporations would be reached only by the capital gains tax—a most imperfect fiscal device indeed. Massive amounts of economic income would be taxed at the preferential capital gains rates or—given present tax law—would escape income taxation completely when transferred by reason of death. The preferential taxation of capital gains is, of course, most relevant for high income taxpayers. Moreover, various other well-known loopholes in the personal income tax laws would remain unfilled. Many of these are also available primarily to upper income taxpayers. So long as these blatant violations of vertical equity—not to mention horizontal equity—remain, replacement of the corporation income tax with a tax on value added seems totally unacceptable on equity grounds.

This does not, however, mean that I would not support a general sales tax at the federal level under the right circumstances. But the circumstances are fairly special, and would involve a thorough overhaul of the federal income tax. First, I would like to see integration of the personal and corporation income taxes, preferably utilizing the partnership method. Corporate profits would be attributed to shareholders and included in their ordinary personal income for tax purposes. A corporation tax would exist, if at all, only as a means of withholding. This would eliminate the double taxation of dividends, if it now occurs, without creating a tax haven in retained earnings. Second, substantive reform of the newly integrated income tax system along lines that have been advocated for years by economists and others interested in equitable income taxation would greatly increase both the horizontal and vertical equity of the U.S. income tax. Finally, a meaningful program of low income relief, such as a negative income tax, would provide a given minimum standard of living for those families at the bottom of the income distribution.

In this context of meaningfully progressive income taxation, a federal sales tax would not be a particularly objectionable addition to the federal revenue system. On balance, the federal revenue system would have been rendered substantially more progressive in the top income brackets by the integration and reform of the personal and corporation income taxes. And any tendency towards regressivity at the bottom end of the scale—including that involved in a TVA—would have been more than offset by the initiation of important low income relief. In this setting it seems difficult to fault the addition of a federal sales tax to our fiscal arsenal, especially since in principle the tax rates applied under the integrated income tax (including the negative income portion) could be adjusted as necessary in the interests of tax equity.

The tax reform just described is ambitious, or even Utopian, and perhaps it is senseless to bother to describe it. Yet I believe the description is worth the bother, if only to highlight the stringency of the circumstances under which elimination of the separate corporation income tax and imposition of a general federal sales tax would be acceptable on equity grounds. Certainly those circumstances are a far cry from what has usually been envisaged by those advocating the simple substitution of the TVA for the corporation income tax.

It would be possible to stop short of this extreme proposal for thorough tax reform in search of acceptable conditions for imposition of a federal sales tax. Substitution of a sales tax for the corporation income tax might be acceptable provided capital gains taxation were significantly reformed in order

to prevent the tax haven in retained earnings described earlier. The necessary reform would involve both taxation of capital gains more nearly like ordinary income and constructive realization at death, with periodic valuation of assets for tax purposes being a further useful feature of such reform. Of course, loophole closing would remain a worthy goal of tax policy.

It would be desirable to combine reform of capital gains taxation and the newly imposed federal sales tax with general low income relief of the type mentioned in the discussion of the ideal tax package. But lacking that, relief for the burden of the sales tax should be allowed low income families by providing refundable credits under the personal income tax. Such credits would result in refunds to those families with income tax liabilities smaller than the amount of the credit. This approach would, of course, involve a considerable administrative burden, which would be avoided by including relief for the burden of the sales tax in the general program of low income relief. Finally, relief to low income families provided through exemption of necessities would distort choices and would rank as a distinctly third-best choice. Of course, as noted earlier, simple substitution of a TVA for the corporation income tax without either taxation of capital gains or low income relief would be completely unacceptable on equity grounds.

II. REPLACING LOCAL PROPERTY TAXES WITH TVA REVENUES

Though details are still quite sketchy, it is said that the Nixon administration is considering proposing a federal tax on value added, the revenue from which would be used to relieve the burden of existing local property taxes used to finance public education. Thus in recent months the revenue from a tax on value added has been discussed primarily as a replacement for local property taxes, rather than as a substitute for the corporation income tax. In this portion of my remarks I want to comment briefly upon what I take to be the Nixon position.

In general, it seems that reduced reliance on local property taxes is a worthwhile goal of public policy. In the early days of this nation, when economic activity was largely agricultural, the local property tax might have been a reasonable way to attempt to tax according to benefits received or ability to pay, or both. But in an industrial society, the local property tax is inferior on both counts; tax liabilities are related closely to neither benefits nor ability to pay taxes. Moreover, the portion of the tax levied on improvements tends to distort locational decisions within metropolitan areas and to retard the economic redevelopment of our central cities. In a related vein, financing public education through local property taxes means that a child's educational opportunities depend crucially upon where he lives. Recent court cases have found this unacceptable. Finally, the local property tax is usually thought to be significantly regressive in the low income range, due to the heavy burden on housing. Thus it seems better on virtually all grounds to finance local public services, including education, through local taxes on sales or income or through shared revenues from state or federal taxes on sales or income than to continue to rely on the local property tax on improvements. (There is no compelling case for discontinuing taxation of land values. In fact, there is a strong argument on both equity and efficiency grounds for continuing the taxation of land. The tax on land, unlike almost all other taxes, causes no economic distortions, and removing it would result in windfall capital gains to present landowners.)

Given the many faults inherent in local property taxation—not all of which would be remedied under state imposition of prop-

erty taxes, another frequently discussed response to the court cases mentioned above—the Nixon proposal would not necessarily be objectionable. Certainly it would be preferable to both foregoing badly needed public services and continued reliance on the property tax. It would be a step forward on efficiency grounds. And it might not have overly adverse effects on the equity of the tax system, since the property tax is probably even more regressive than the value added tax over the low income range. (This difference arises largely from the treatment of housing under the two taxes: the property tax imposes a heavy burden on housing, whereas the TVA would probably exempt it.) However, any endorsement of the Nixon proposal must be closely qualified.

If the ideal federal income tax system outlined earlier was implemented, education could acceptably be financed largely through local sales or income taxes, with a minimum quality of education being assured through state or federal grants-in-aid. This would have the advantage that local control of education would be maintained. In principle, even regressive local sales taxes would be acceptable, since they could be offset by adjusting the level of transfers under the assumed federal program of low income relief. Alternatively, more reliance could be placed on state or federal taxation and revenue sharing or grants to local governments, through perhaps at the expense of some loss of local control. In any case, substituting sales tax financing of education for property tax financing would be most acceptable in the context of thorough reform of the federal income tax system, including initiation of a system of low income relief. Seen in this light, the Nixon proposal to replace property tax revenue with revenue from a federal TVA, without reforming federal income taxation, represents a distinctly inferior, though perhaps acceptable, compromise with tax equity.

But other compromise solutions are available, and some are superior to the Nixon choice. The most obvious alternative, and the only one I want to discuss here, would be to use revenues from reform of the existing income taxes to replace revenues from the local property tax. Base broadening would produce considerable revenue and an income tax that is more equitable, both horizontally and vertically, as well as more nearly neutral, and should be a high priority legislative item. The choice of income tax reform over imposition of a federal tax on value added seems especially appropriate in the present context, in that the regressivity of the federal tax system has recently been reduced by the initiation of the ADR system and the investment tax credit. It simply seems undesirable on equity grounds to follow the granting of these incentives to business investment with imposition of a national sales tax. Thus while the Nixon proposal may be acceptable if the alternative is to forgo important public services or to continue to rely upon the property tax revenues is distinctly inferior to replacing these revenues through reform of the income tax system. It is to this matter of income tax reform, and not to the tax on value added, that I urge the Congress to address its attention.

III. TVA OR RETAIL SALES TAX

To this point the discussion has focused upon the substitution of a federal tax on value added for the federal corporation income tax or the local property tax, with or without concomitant income tax reform. It is desirable to pause briefly at this point, however, to ask whether an American federal sales tax—if one is to exist—should be levied as a tax on value added or in the more familiar form of a retail sales tax. The two forms of sales tax can be expected to have roughly equivalent economic and distributional effects, so the choice between them should be made primarily on administrative grounds.

The primary advantages of the value added

approach to taxing sales are the relative ease of exempting business services, capital goods, and intermediate products from the tax and the self-enforcing features of the tax.

The advantages of the retail sales tax include its familiarity to American businessmen, the smaller number of firms and amount of paperwork involved, and the greater ease of piggybacking state and local sales tax on a federal retail sales tax. Which set of considerations should control any decision about a federal sales tax is far from clear; knowledgeable authorities can be found on both sides of the issue. But one thing is certain. Any decision to levy a tax on value added, rather than a retail sales tax, should not be made by default because no one bothered to consider it explicitly. Any detailed analysis of the question will almost certainly involve considerations such as those mentioned above, and will put to rest such irrelevant or specious, but often repeated, arguments for the TVA as "the Europeans are using it" and "border tax adjustments are allowed under the value added tax."

IV. SUMMARY OF CONCLUSIONS

The most important policy conclusions offered in my remarks today can be summarized briefly. First, the simple substitution of a value added tax for the corporation income tax would be completely unacceptable on equity grounds. Ideally imposition of a tax on value added would occur in the context of integration of the personal and corporate income taxes, reform of the newly integrated income tax, and initiation of low income relief. A less ambitious, but acceptable, program would replace income tax integration with reform of capital gains taxation. Failing this, the TVA should not be substituted for the corporation income tax.

The Nixon proposal to replace property tax revenues with a tax on value added would be acceptable, if the alternative were to forgo badly needed public services or to continue to rely upon the local property tax. But a preferable alternative would be to replace lost property tax revenues by reforming the income tax system, rather than by imposing a national sales tax. Finally, whether any future American sales tax at the national level should take the form of a value added tax or a retail sales tax deserves far more explicit consideration than it has thus far received.

THE EXPENDABLES

Mr. HUMPHREY. Mr. President, on January 20, 1972, I introduced, for myself and the Senator from Illinois (Mr. PERCY), S. 3044, a bill to amend the Civil Rights Act of 1964 in order to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs. This bill responded to an awakening public interest in millions of handicapped children, youth, and adults who suffer the profound indignity and despair of isolation, discrimination, and maltreatment. It is essential that the right of these forgotten Americans to equal protection under the laws be effectively enforced through prohibiting their exclusion from services receiving Federal assistance. Increasing support for this position in the Congress is reflected in the current addition of 10 Senate cosponsors of this legislation.

In my remarks upon the introduction of the bill to protect the civil rights of the handicapped, I described some of the broad categories of people who would be directly affected—children who are mentally retarded, physically handicapped, or emotionally disturbed; disabled veterans; the mentally ill; and handicapped

youth and adults who can and want to learn a trade and experience the dignity of work and a paycheck. But the fundamental fact that one confronts is a paucity of information, an absence of firm statistics, regarding the true extent of this great human need across America. Truly, this fact, in itself, demonstrates the segregation of millions of Americans from society—suggesting a disturbing viewpoint that these people are not only forgotten but perhaps expendable.

An excellent series of articles appeared in the Evening Star, published in Washington, D.C., during January, in which this point is made precisely in the title of the series, "The Expendables." The author of this series, staff writer John Mathews, has performed a vital service, and in the finest tradition of in-depth reporting, in laying before the public the true story of exclusion and inadequate concern experienced by hundreds of handicapped children in the Washington metropolitan area.

Developing interest by the press, radio, and television in this vital issue has been indicated by editorials by WRC-TV in Washington, D.C., and by the Washington Post. The February 10, 1972, editorial by the NBC-affiliated television station asserted that—

Thousands of people, especially children, have been excluded outright from the public education and job training that could have led them to a healthier, happier, more productive life.

And its conclusion underscores the purpose of my legislation:

We have an obligation to these hidden and forgotten people—we can and should no longer avoid it.

Most recently, an editorial, entitled "The Legal Rights of the Retarded," published in the Washington Post of March 15, 1972, drew attention to the significance of an order by a Federal court in Montgomery, Ala., requiring the correction of conditions at an institution for the mentally retarded in Tuscaloosa. The editorial stated:

According to one observer, this is the first time a court has ever held that mentally retarded persons involuntarily confined in an institution have a right to adequate treatment and care.

And the editorial goes on to cite the national significance of expanding litigation efforts in this area.

I offer these important items in the hope that they will help to promote informed public debate and action on the vital need to affirm and guarantee the rights of the handicapped. Representative CHARLES A. VANIK, of Ohio, who introduced a bill, H.R. 12154, identical to mine, has made an active and continuing effort to develop the statistical and case record on the denial of the civil rights of persons with mental and physical handicaps. In a statement in the CONGRESSIONAL RECORD of February 7, 1972, on "Discrimination Against Handicapped Veterans," Representative VANIK emphasized the despair and indignity felt by some 224,000 veterans registered at Public Employment Service offices in fiscal 1971, who were not placed in regular nonagricultural jobs. And in a further statement in the RECORD of Feb-

ruary 17, 1972, he spelled out the State-by-State statistics of 4½ million handicapped children of school age who are excluded from public schools in America.

These statistics are shocking and demand decisive action by Congress. I have joined in sponsoring legislation introduced by the Senator from New Jersey (Mr. WILLIAMS), authorizing funds for a White House Conference on the Handicapped in the Office of the Secretary of Health, Education, and Welfare. These can be important steps in identifying human needs and coordinating Federal programs of assistance. I also urge that action be taken on my bill, S. 3044, which proposes a direct solution of the central problem: The denial of the civil rights of millions of Americans.

Mr. President, I ask unanimous consent that the articles and editorials cited in my remarks—the five-part series, entitled "The Expendables," by John Mathews, appearing in the Evening Star; the WRC-TV editorial, "Hidden People," of February 10, 1972; and the editorial, entitled "The Legal Rights of the Retarded," appearing in the March 15, 1972, issue of the Washington Post—be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

THE EXPENDABLES—I

(By John Mathews)

In Washington and its Maryland and Virginia suburbs there are hundreds of children society treats as expendables: Children with physical, mental and emotional handicaps who are either excluded outright from public education or inadequately served by their school systems.

These are the children it has become fashionable to call "exceptional," or "special." They are the mentally retarded, the emotionally disturbed and the physically handicapped—the innocent victims of disease, accidents, environment, heredity or circumstances. They can be born to the poor in the inner city or to the affluent in the suburbs.

Handicapping conditions do not discriminate between Larry, who lives in the District, or Joyce from Prince Georges County, Daniel from Montgomery County, or John from Fairfax.

These are not their real names. Their situations, however, are real—all too real, in fact, to them and their parents.

Larry is 11½ and cannot talk. He can signal anger and pleasure through a personal code of guttural grunts. Psychologists have labeled him "brain-damaged," that imprecise, catch-all tag used to describe children whose normal growth and development has been mysteriously stunted.

Although Larry has never spoken, you can give him the "Yellow Pages" section of the phone book and say, "Find me the Hecht Co.," and Larry will flip to page 432 and place his finger on the department store's name in a display advertisement. He will then point to the Sears ad, but if you try to trick him by telling him it's Penney's, he grunts angrily, then "Ummms" approvingly when you finally say "Sears." Larry can identify gasoline companies, motels and carryouts in the same way.

Larry's mother has a desperate faith that somehow a key can be found to unlock those words shut up within her son's mind. But, like hundreds of other handicapped children in Washington, Larry has never had a single day of public education in his life.

Five years ago, a school principal, in effect, unilaterally banished Larry from public education. He told Larry's mother that the Dis-

district school system had no special programs for her son. Along with the parents of about 500 other children, Larry's mother has been waiting—for two years now—to get a District grant to pay for tuition in a specialized school that could help her son.

Meanwhile, Larry attends a recreation program for two hours a day at the dismal Anacostia Park Playground. There are four such play centers for retarded children around the city. Officials say about 30 children in the programs (nearly half) have never been to public schools.

Joyce, 7, lives in Prince Georges County. She is what is known as "multiple-handicapped." Joyce is deaf and also said to be emotionally disturbed. She has been out of school since September.

As in the District, schools in Prince Georges, and, for that matter, other Maryland and Virginia suburbs—have no programs for children with such multiple handicaps. Joyce may also have difficulty getting accepted at a specialized school for the deaf, since schools for the deaf or the blind often exclude children who are also emotionally disturbed or mentally retarded.

Before Joyce's parents can find a school for their child and qualify for special state aid given in Maryland to educate children with serious handicaps, they must obtain an evaluation from a psychiatrist. But they can't afford the fee, usually \$50 or more.

After a frustrating search lasting several months, the county's special education staff finally was able to arrange a free evaluation for Joyce this month at the District's St. Elizabeths Hospital. No such free service existed in Prince Georges.

By the time the results of the evaluation are forwarded to the state education department and papers are processed, Joyce probably will have missed nearly a year of the valuable schooling and therapy she needs.

Daniel is luckier than Larry or Joyce, because he is in school in Montgomery County. He is 15, tall for his age (well over 6 feet), able to get along with people, adept and responsible when he is given jobs like mowing lawns or washing cars.

Daniel is also mentally retarded. His IQ is around 50, about half that of the so-called normal child. For several years, he has been in a school program for the trainable retarded—now euphemistically called the "moderately" retarded—those who test in the 35 to 55 IQ range.

At the Concord School in Bannockburn, Daniel goes to classes with other retarded children, ranging in age from 5 to nearly 21. His principal says most of the children eventually will wind up in state institutions for the retarded after they reach 21, when their right to further public education ends, or when their parents die or can no longer cope with them in the home.

In effect, the principal says, much of the training in self-care and obedience to rules at Concord School is designed to enable the children "to function better in an institutional setting" later.

Daniel, however, could function with some help in society, the principal says. But the county has no program of on-the-job training or placement for children of Daniel's competence. The principal is trying now to start his own.

John, whose family lives in Fairfax County, is not retarded, but he is in the intensive social habilitation ward—the "locked up" ward—at Lynchburg Training School and Hospital, the state institution for the retarded which serves half the state, including Northern Virginia.

The 17-year-old boy, and about 25 other young men and adolescents, are at the institution for the retarded because state correctional schools say they cannot handle disturbed children. Lynchburg's director, Dr. Benedict Nagler, has unsuccessfully resisted accepting such cases, claiming his training school is not equipped to function as a cor-

rectional institutional or as a mental hospital. "This is one of the grey areas in our state," he says.

The cases of Larry, Joyce, Daniel and John are similar to hundreds in Washington, its suburbs and the nation. Some specialists have estimated that perhaps as many as 1 million retarded children in the country are excluded from schools as "uneducable."

Locally, the best estimates of the number of children barred from public education, or badly served by it, have been made recently in Washington, where a new associate superintendent, Dr. John L. Johnson, is making a strong case to the school board, the city government and Congress for vastly increased financial support.

Dr. Johnson calculates that at least several hundred children in the District are totally excluded from public schools. Nearly 900 more children have been individually identified as needing special education programs not now provided because there are no funds. These children include 223 diagnosed as emotionally disturbed, 269 retarded children and 329 with a variety of special learning problems. The remainder are handicapped by degrees of blindness, deafness or poor physical health.

In the suburbs, officials in charge of special education programs insist no children are barred from schools or special tuition aid for private schooling, but that can be a matter of definition.

With the exception of Alexandria, all suburban public school systems have disowned any direct responsibility for a small group of handicapped children—the profoundly retarded children—often called "uneducables"—with IQs below 30, who function at the level of 1- to 2-year-old infants.

To fill this gap, the Montgomery County Association for Retarded Children recently began its own program for the profoundly retarded. Three children, age 6 and above, were known to need such schooling. But, between May and October, as word of the new program spread, a dozen or more prospective students emerged. These were children sheltered by their parents, unknown to school authorities.

There's little doubt that school programs for handicapped children in the suburbs are in most respects light years ahead of those in the District. Montgomery, for example, has been known to attract parents of handicapped children from neighboring states who specifically settle in the county because of its special education programs.

While the suburbs can claim superiority, their programs generally are deficient when it comes to dealing with emotionally disturbed children and those with special learning problems, like reading difficulties.

School officials in Washington and the suburbs readily acknowledge those days that they may lose control soon over placement of children in special education programs—that is, who qualifies and who doesn't. The handwriting on the wall, as they see it, is a three-judge federal court decision issued in Pennsylvania last October.

After expert testimony, the court ruled that the state could not exclude any retarded children from the right to public education, since all such children can be educated in some way. For some, this means reading at a fourth-grade level; for others, it means being taught to feed, clothe and toilet themselves.

In the District, the parents of seven children—all excluded from public education—have filed a similar class action law suit contesting school board rules that give officials wide discretion in barring children from public education.

Children, particularly those with behavior problems, have been expelled permanently from schools under board rules that give as causes for expulsion: "Immoral conduct, indecent language, violent or pointed oppo-

sition to authority, persistent disobedience or disorder, habitual tardiness, unauthorized absence, poor personal hygiene and continuing academic failure."

THE EXPENDABLES: IT'S 3 AGAINST 1—II

(By John Mathews)

At Boys Junior-Senior High School, the prime facility in Washington's public school system for adolescent boys said to have "emotional and behavioral problems," a typical school day began recently with the singing of the religious hymn, "Holy, Holy, Holy, Lord God Almighty. . . ."

Following the hymn, both students and teachers at the assembly recited in unison the vintage verse "Teamwork" by Edgar A. Guest, the popular poet of the '20s and '30s. A teacher moralized to the boys about the self-reliant and non-conformist messages of Ralph Waldo Emerson and Henry David Thoreau.

Then, Hiram F. Jones, the 65-year-old principal who has run the school for six years, delivered what amounted to a short inspirational sermon. "Look at life's bright side. Look at life through rose-colored glasses" he told the boys. "Life is what you make it no matter how you take it."

Later, Jones singled out individual boys for praise or criticism. An embarrassed teenager was called, "My No. 1 man," and complimented for his good behavior and well-shined shoes. Another boy was told that he was "going to learn how to obey," and was required to make a public apology for an infraction of rules.

"It's three against one," Jones told him. "Your mother wants you to straighten out, your parole officer and me. We're going to break your spirit, brother."

The assembly wound up with a mathematics contest and an award for the best-dressed student. Teachers voted in the contest, Jones told a visitor, "because the boys used to gang up and vote for somebody who looked like a vagabond and someone who looked like Clark Gable wouldn't win."

Principal Jones' special brand of exhortation and evangelism for dealing with troubled young people has been repeatedly questioned in recent years by outside critics.

Evaluations have said that criteria for placing students in the school are unclear, that the school has an inadequate program, lacking psychological services, and that no accurate record has been kept of what happens to its students.

Fifty-six students are currently enrolled, but daily attendance seems to hover around 20, giving the school with eight teachers and one counselor an incredibly high and costly student-teacher ratio.

Washington's Boys Junior-Senior High School illustrates a problem shared by both the District and suburban school systems: The needs of students with emotional problems have been dealt with inadequately—or not at all.

In the field of special education—the name given to school programs for handicapped children—disturbed children are the most neglected.

Besides emotionally disturbed children, most area schools are also virtually rejecting any responsibility for school programs for these groups of children:

Preschool retarded and physically handicapped children, the 3-, 4- and 5-year-olds whose parents must find private schooling much of which they consider inadequate.

So-called profoundly retarded children those with IQs of 30 or below.

Adolescent and young adult handicapped students, who can find little in the way of job training available to them in public school programs.

For students with emotional problems, Prince Georges County has "no program as such," according to a school official. Arlington, Fairfax and Montgomery counties have

classes in some elementary schools, but virtually no programs for junior and senior high school students. Alexandria pays attention to the older students, but ignores the younger children.

How to handle children with emotional problems raises many basic questions not only about this group, but also about other handicapped children, such as the retarded or physically disabled.

Teachers and administrators in the special education field—often prodded by parent and community organizations—are asking these days whether handicapped children are helped or harmed by being segregated in separate school buildings and into special classes.

Do children suffer a psychological stigma from special placement? Does isolation from normal children and confinement with children having the same problems reduce or reinforce the problems? And, in the case of emotionally disturbed children, are separate classes and schools actually helping troubled children or are they helping teachers and principals rid themselves of children they consider troublemakers?

In Arlington, Margaret Wadsworth, the county supervisor for special education, says she has resisted establishing classes for older emotionally disturbed students. "As soon as you create such classes, they are filled up," she said. "All teachers have students they consider emotionally disturbed and want removed from their classes."

In Washington, one of the committees of a special education task force that examined programs for emotionally disturbed children said the District's "social adjustment" classes, currently enrolling nearly 600 children, "often serve as dumping grounds for second-rate teachers and for disruptive children." Children are often assigned "arbitrarily and unfairly" to what are known as "sack classes," because, in the words of a junior high school principal quoted by the committee, the children "dare to be different."

In Montgomery County, a consulting team headed by Prof. Paul H. Voelker of the University of Pittsburgh surveyed special education programs. In its March 1970 report the consultants said it was hard to find a difference between children labeled as "emotionally handicapped" and placed in special classes and children in other classes said to suffer from "specific learning disabilities."

The consultants warned that "the very fact of special class placement, assignment to a teacher in a self-contained class . . . is likely to lead to a certain amount of inflexibility, labeling and self-fulfilling prophecy."

Visits to classes for children with specific learning disabilities appear to bear out the consultants' warnings. Children in these classes are said to be of normal or higher intelligence but have perceptual-motor problems. They have difficulty dealing with symbols or controlling hand movements and often see letters and numbers in reverse fashion.

In one school with a middle and upper income population, the 11 children in a class for specific learning disabilities were largely isolated from the rest of their classmates. The teacher said that virtually all the children exhibited degrees of emotional problems and at least two belonged in a class for disturbed children. During her two years with the class, the teacher said, only one child made enough progress to return to a regular class.

Despite the increasing trend against special, separate schools for handicapped children—especially the emotionally disturbed—Montgomery County is ready to open one. The new Mark Twain School in Rockville will eventually have 250 students, aged 11 to 16, who are no longer tagged with the label "emotionally handicapped," but are de-

scribed as having a "range of behavior patterns and educational needs" that cannot be met in a regular school setting.

The Pittsburgh consultants have expressed fears that Mark Twain School will become a "dumping ground" for disturbed students. At a time when the labeling and isolating of handicapped children is being de-emphasized, the consultants said it was "unfortunate" the county should start a school that "can hardly help but lead to the ultimate in labeling."

In Washington, the city's new head of special education, Associate Supt. John L. Johnson, plans major changes for the archaic Boys Junior-Senior High School and for the city's entire approach to disturbed children. Formerly an associate professor at Syracuse University specializing in the problems of emotionally handicapped children, Johnson is planning to establish what he calls therapeutic centers, homes in the community and even store fronts where troubled children will spend part of their school day, or relatively brief period in their school careers, getting special help.

"I don't think we ought to be building anything separate or special for any specific group of handicapped children," he said in a recent interview.

Johnson, however, has inherited another special school, the Mamie D. Lee School, a facility for retarded children in Northeast Washington.

It took parent groups about a dozen years of pressuring the school board and the city and lobbying congressional committees to get the school built as a center for trainable retarded, children with IQs in the 30 to 55 level. The new school opened in the fall, but is still at half its capacity. It lacks a principal and an assistant principal, as well as shop, home economics and physical education teachers. Dr. Johnson says he is resisting parent and staff pressure to fill the school with students and complete staffing until he finds the best qualified personnel available.

Even with a full enrollment of 200 students, the Lee school will take care of only a fraction of the city's estimated 700 retarded children classified as trainable. The remaining children will still go to school in some of the system's oldest facilities, such as the nearly 100-year-old Lennox School Annex opposite the Navy Yard in Southeast Washington, or in makeshift classrooms invariably located in the basements of regular school buildings.

Johnson and many specialists in the field of educating handicapped children agree that children at the trainable or moderately retarded level do not need special classes. But, he feels that the traditional approach of segregating these children in separate schools or isolated classes with regular school buildings—the pattern in Washington and the suburbs—is wrong.

The isolation of the moderately retarded dates from a time when educators felt that because children of this level of retardation often look and act differently from normal children they should be sheltered for their own good or the "protection" of normal children.

John and other specialists argue that if the objective of education for the retarded—or for the deaf, blind and physically handicapped children—is to give them every chance to live as normal a life as possible in society, they must have early and frequent contacts with normal children.

Perhaps the most debate and disagreement in the special education field centers on the so-called educable retarded, children in the 50-55 to 78-80 IQ range. Research in recent years has raised doubts as to whether children scoring on the upper end of the scale, in the 70s and 80s, are actually retarded, or are merely slow in developing because of deprived backgrounds.

Much of Judge J. Skelly Wright's 1967 de facto segregation decision dealt with this group of children. In barring the then current track system, the judge ruled that over 5,000 children classified as educable retarded and confined to special classes had been denied their rights to equal educational opportunity.

Wright found that the special "basic track" classes were dumping grounds for children with a variety of problems, that the instructional program was inadequate and that once assigned to such a class a child was condemned to an inferior education.

In Fairfax County, Beatrice Foster, the supervisor for special education, candidly acknowledges that "there is no question classes for educable retarded have often been a dumping ground." In the last two years, she has been reducing the number of children assigned to such special classes.

Prince Georges County schools have tried to limit the number of children in educable retarded classes by having "floater" teachers. These special teachers work with individual children and small groups, who remain part of regular classes. Montgomery County is using the same approach on a smaller scale.

Like most special educators, Montgomery's director Philip J. Stromowsky sees special placement of handicapped children as a last resort. In coming years, he maintains, the county will emphasize special help for children with special needs who will remain in the mainstream of public education.

Archie S. Oliver Jr., Alexandria's first full-time director of special education who has had extensive teaching experience in the field, including several years in the District, takes a more radical view. "I see the time when there will be no special classes for handicapped children," he says. Special education teachers will act as supports to regular classroom teachers, he adds.

The ever changing approach to handicapped children is illustrated, Oliver says, by the fact that "only 20 years ago, schools thought mildly retarded people could not be educated and should be placed in institutions for their entire lives."

PRESCHOOLS RARE FOR HANDICAPPED

Just about everybody believes that children benefit from early education. Parents pay out money for cooperative and private preschools. The federal government supports Head Start programs for 3- and 4-year-olds and many public school systems have established preschools and kindergartens.

Often, however, programs which seem to be beneficial to normal children are generally denied handicapped children. Among area public schools only the small Alexandria school system has a well-established preschool program for handicapped children.

FEW EARLY PROGRAMS

If you live in Washington, or in other Maryland and Virginia counties, and you have a handicapped child, there are no public school programs generally available before age 6.

In Alexandria, the preschool program at Lee School for children who are retarded and sometimes have physical handicaps is largely the result of the work of a dynamic educator, Mrs. Cressie Miller.

Enrolling children as young as 2, the program has been operating for eight years. During that time, Mrs. Miller has encountered several cases of children who were diagnosed as retarded. These diagnoses, however, were wrong.

A withdrawn 2-year-old could not speak when he came to the preschool. Another child, who had spent two years in the District's Junior Village, could not play with toys and barely responded to adults and other children. A little girl, who had enjoyed a favored place in her family as the youngest

of seven children, had drawn a cloak of silence about her after her mother had a new baby.

ENTER REGULAR CLASSES

All of these children broke out of their shells and eventually entered regular first-grade classes. If they had not had the benefit of early education, Mrs. Miller believes they probably would have entered special classes for the retarded at age 6 and the prophecy of the incorrect diagnosis would have been fulfilled.

"There must be many children like these who actually become retarded because they have not had a chance at early education," she concludes.

THE EXPENDABLES: OUT OF SIGHT, OUT OF MIND—III

(By John Mathews)

The women—teen-agers to middle-aged—are dressed in identical, loose-fitting, striped robes. Many wear oversized diapers with "D.C. Government" stenciled in ink on them. They wander about the large, barren, yellow-tiled room in dazed, bizarre postures. Some clutch after unseen objects, others crouch in fetal positions, still others chatter aimlessly.

In another section of the new Curley Building—designed, you are told, in modules to "make it more humanizing"—the teenage boys are eating lunch. Some have their faces literally in their trays, so they can scoop the food with their bare hands into their mouths. As they finish eating and leave the small dining room, an attendant swabs food off their naked bodies, covered only with diapers bearing the government stamp. The boys are then pointed down a hallway where another attendant checks them into another large, bare, tiled room.

They are all "residents" at Washington's institution for the retarded, which bears the idyllic name of Forest Haven. They are the so-called "profoundly retarded"—adolescents and adults with the mental capacity of 1- and 2-year old infants.

These scenes are duplicated at virtually any large state institution for the retarded, like Maryland's Rosewood or Virginia's Lynchburg Training School and Hospital.

But conditions like these need not exist.

At Forest Haven in the Poplar Cottage 10- to 24-year-old males at about the same level of retardation as those in the Curley Building have been taught to dress and feed themselves. Most are now toilet trained. A rigorous program of "operant conditioning" has been used in which tokens are given as rewards for acceptable behavior. They can be cashed in for toys or candy.

The reason some profoundly retarded people at Forest Haven are living at virtually an animal level and others are not is simply a matter of money. It takes more staff to run a carefully controlled training program like that in the Poplar unit. But the city institution has about 100 vacant positions (of an authorized strength of 500), resulting from congressional and city government fund cutbacks and job freezes.

"Out of sight, out of mind," is how R. Rimsky Atkinson, Forest Haven's acting director for the last three months, characterizes public and government attitudes toward institutions for the retarded here and elsewhere. Invariably, such institutions, as well as mental hospitals and prisons, are tucked away in some rural setting or hidden behind high walls.

Like Washington's Forest Haven, Lynchburg Training School and Hospital—the Virginia institution for the retarded that serves Northern Virginia—is also "out of sight, out of mind."

With about 3,600 "patients"—as they are called at Lynchburg—the institution is at least 500 beds above capacity. At last count, 160 patients were sleeping on mattresses on the floor. Last year, a hepatitis epidemic,

probably abetted by crowded living conditions, struck several hundred inmates, two of them fatally.

Lynchburg, which has nearly 600 patients from Northern Virginia, spends an estimated \$8 a day per patient, which Dr. Benedict Nagler, the institution's "superintendent," says is probably the lowest figure for any comparable institution in the nation. Washington's Forest Haven spends \$18 a patient, also inadequate in view of higher personnel and food costs here than in Southern Virginia, said Atkinson, the acting director. The cost in Maryland institutions is over \$30 daily per resident.

Maryland's largest facility for the retarded, Rosewood State Hospital, the subject of much media attention recently, is also badly overcrowded with its 2,500 patients, 500 more than its capacity. After his first visit to Rosewood, the state's new director of mental retardation, Bert W. Schickel, called it one of the worst he had seen in his 35 years in the field.

Schickel said he was even more concerned with what he called dehumanizing conditions—such as jail cottages, locked doors and isolation cells—than by the overcrowding.

Conditions at both Rosewood and Washington's Forest Haven have been the subject of recent court actions. At Rosewood, an attendant was charged last year with whipping several young residents. In the District, parents of three children have brought civil actions against the city, charging negligence at Forest Haven resulted in injuries to their children.

In all of the three District cases, negligence is attributed to lack of supervisory personnel and overcrowding—the direct result of congressional and city fund cutbacks. A group of youths in one case shoved a helpless boy into a scalding shower and, in another incident, a child was intentionally burned on the ear with an electric iron by another child. The third case involves the scalding in a hot tub of a paralyzed child who was being bathed by an attendant.

With 1,300 residents, Forest Haven is at least several hundred above capacity, but Atkinson, acting director, considers shortage of personnel an even more critical problem. In Pine Cottage, for example, where 82 severely retarded boys and men aged 15 to 50 are housed, three counselors are assigned to day shifts and two at night.

Beds in dormitories are less than a foot apart and residents are confined most of the day to two rooms because of the scarcity of counselors.

To operate something beyond the custodial program now offered, Atkinson said, 18 counselors are needed for each day shift instead of three and four at night instead of two. The cottage population should also be reduced from 82 to about 60, he said.

Beyond the visible conditions—the overcrowding, the programs which consist largely of endless hours of television, many residents of mental institutions could be living in the outside world. Hundreds of retarded people at Forest Haven, Lynchburg, Rosewood—and even Maryland's new Great Oak's Center, considered a model institution—do not belong in those institutions.

For example, Lynchburg has among its 3,600 residents 16 persons, most of them over 50, who are officially classified as not retarded. An additional 21 patients are "borderline" retarded and 379 more are classified as mildly retarded.

Some of these people have crippling handicaps or conditions requiring constant bed care, and others have been "institutionalized" to such a degree that they could not function in the outside world. But many could live outside the institution, just as thousands of other retarded persons do successfully.

At the District's Forest Haven, according to Atkinson, about 50 school-age children

could live at home, but do not because city schools lack adequate educational programs for them. At least 135 adults are ready for job training programs that could help them acquire a skill and possibly employment and self sufficiency outside the institution. But, Forest Haven has funds for only 50 on-the-job placements off its grounds.

"If we had group homes and social services—we only have two social workers with 1,300 residents—we could return at least one-third of the residents to the community," said Atkinson. Another third of the residents could benefit from "training activities, rather than the babysitting we give them now," he added.

Even at Maryland's new Great Oaks Center in the Calverton section of Silver Spring—considered a model of institutions for the retarded—there are children who do not belong there. The center has at least 10 school-age children of the trainable retarded level who could be at home, if Prince Georges County had room for them in school programs.

Dr. Bruce H. Hobler, the institution's clinical director, says a "large number" of the center's children, infants to 12-year-olds from five counties, including Montgomery and Prince Georges, could live outside the center if there were community resources to support them at home. "Our ability to move children out depends entirely on the availability of community resources," Hobler said.

The lack of community resources is keeping institution for the retarded filled above capacity. Many residents of institutions come from broken homes or problem-ridden families, but little has been done to line up foster homes willing to take handicapped children. School educational programs have been slow in developing here, again limiting the chances of some residents returning to their families.

The new movement in other states of developing group homes—small living units in the community for the retarded—is just beginning in the Washington area. The Montgomery County Association for Retarded Children plans to open a network of such homes in the next few years for retarded children, adolescents, young adults and older people, most of whom come from institutions.

NOVEL GREAT OAKS METHOD OVERCOMES BASIC HANDICAPS

In a ward at Maryland's Great Oaks Center 8- to 12-year-old retarded children are routinely condemned by society to live their lives out as permanent 1- and 2-year-old babies.

They are "profoundly retarded" children said to have barely measurable IQs and the mental capacity of infants.

In most institutions, attendants spoon-feed these children, diaper and dress them. But, at Great Oaks in the Calverton section of Silver Spring, some of these children are now feeding themselves with utensils, dressing themselves and even becoming toilet-trained. They may be the first profoundly retarded children with severe physical handicaps ever to learn these skills in any institution in this country.

The acquisition of such basic skills means that some of the children will actually be able to leave the institution and return to their families.

The unique training program at Great Oaks has been developed by Howard Reuben, a retired government psychologist, who uses controversial operant conditioning techniques, suggested by the research of the eminent behavioral scientist B. F. Skinner. The approach seeks to reward positive behavior and ignore improper behavior.

Some private and public schools and institutions in the Washington area are experimenting with varieties of these techniques for training seriously retarded and other

handicapped children. Some students are given tokens for positive behavior that can later be cashed in for toys or candy, and in other programs, small money payments are made for good attendance and behavior.

Public school officials are skittish about discussing operant conditioning or behavior modification programs since they fear negative public reactions. "It's hard to explain to people that we are using techniques with children that have been used to train white rats and pigeons," one teacher said.

When Reuben first began working with an 11½-year-old child we will call Jimmy, doctors said the child had virtually no measurable intelligence and had a physical condition making it impossible for him to grasp and hold objects in his hands. He was usually fed by an attendant, or placed his face partially in a tray so he could push food into his mouth.

Reuben used a \$90-a-week attendant he trained as the prime teacher and recorded Jimmy's progress on video tape.

The training program for Jimmy began with the attendant holding a spoon in the child's hand, dipping it into food and lifting it to Jimmy's mouth. Soon, Jimmy began to exert pressure on the spoon and the attendant could let go of his hand just before the food went into his mouth.

Gradually, the attendant over a few days moved her hand away from the child's hand to his wrist. Already the medical prediction was refuted. Jimmy was holding the spoon, but still required the aid of the attendant's hand on his wrist.

By the end of 2½ weeks, the attendant was holding Jimmy's arm at the elbow. It took another week to get Jimmy to feed himself independently without even the slightest pressure of the attendant's hand at his elbow. During the whole training period, food provided the incentive. When Jimmy did not cooperate, or failed in his task, he experienced delays in getting the food he craved.

A more involved procedure was used to toilet train Tom, an 8½-year-old profoundly retarded child with a spinal defect that makes it impossible for him to walk. He has to pull himself along the floor with his pathetically limp legs tucked beneath him.

Psychologist Reuben noticed that Tom did not like wet diapers and would often pull them off when they were not changed immediately. Tom was indifferent to food, but loved hot showers, which became the primary reinforcement tool in his training.

Tom's intervals of wetting his diaper were recorded and found to occur in a regular pattern. One day he was taken to the shower, just before a regular period of urination, and placed over the drain. When he urinated in the drain, he was immediately rewarded with a hot shower.

Later, a plastic bowl was placed over the shower drain. Tom quickly learned to urinate in the bowl and empty it in a nearby toilet, which he enjoyed flushing. The next step was to have a carpenter construct a "potty chair," since none for 8½-year-olds is manufactured commercially.

Tom quickly made the transition to the chair, using it soon for defecation as well. Soon, the chair's legs were cut and the seat was placed over a regular toilet. A ramp had to be built so Tom could drag himself up to the toilet seat without assistance.

Tom is also learning to feed and clothe himself and psychologist Reuben's objectives for him are widening. He wants to see how much language a child said to be destined to live his life at an infant level can learn.

THE EXPENDABLES: SOME AREAS HELP MORE—IV

(By John Mathews)

If you have a handicapped child needing specialized treatment and education which public schools cannot provide, perhaps your

first concern should be where you happen to live in the Washington area.

It's no small matter, either.

Full-time residential treatment and education offered only by a private psychiatric hospital for an emotionally disturbed child can cost \$20,000 or more annually. Day programs for retarded or physically handicapped students can cost \$8,000 or more.

In Maryland, you can expect to receive over \$10,000 to pay for your child's education and therapy, but, if you live in Virginia the maximum you can get is about \$4,000. In the District you can get up to \$4,500.

Parents with high-option military or government insurance can make up much of the deficit. Families without such protection are out of luck.

These disparities in payments may soon become a legal issue involving the right of every child to a free education at public expense, regardless of his disability and regardless of the cost of that education.

The District, Maryland and Virginia have what are called "tuition-grant" or "excess-cost" programs based on the rationale that it is not feasible for public schools to operate programs for some categories of severely handicapped children.

Children who are both deaf and blind, or who are deaf or blind, as well as retarded or physically impaired, require programs with specialized equipment and expert personnel. Some severely neurotic or psychotic children also need a full-time hospital setting.

Since there are relatively few of these children, it would not make economic sense for public school systems to operate such programs themselves. As a result, the tuition-grant and excess-cost programs have been established to help pay the costs of educating such severely handicapped children in private schools and institutions.

Virginia, Maryland and the District in effect acknowledge through their special grant programs that seriously handicapped children who cannot be educated by local school systems have a right to a free public education. But limited funds—particularly in Virginia and the District—curtail that right.

Maryland's excess-cost program with its more liberal payments has provided as much as \$14,000 annually for some individual children, but the State Board of Education will soon consider a recommendation from its education department to place a \$6,000 limit on individual grants.

Such dollar limits, however, may become a moot question in the future. Court decisions are sprouting up around the nation prohibiting school authorities from excluding severely handicapped children from public education. In Washington, a case has been filed on behalf of emotionally handicapped and retarded children who have been excluded from local public schools.

One of the remedies for satisfying the courts is for public school systems to start programs for handicapped children they have previously not educated. Washington last fall began a small experimental class for profoundly retarded children, which enrolled several children who are plaintiffs in the court suit.

If a school system faced with a court decree, however, decides not to take on a new program for previously unserved children, it has the alternative of providing payments for education in private schools and institutions. Plaintiffs in that event are likely to ask the court to order full payment of all costs, which would vastly inflate tuition grant budgets.

Under current tuition grant programs, costs have escalated annually. The District now spends \$1.3 million a year for 505 children, an average grant of \$2,500 a child.

When the program began in Maryland in 1968, 32 children received grants costing \$103,579. Last year, 104 children, or more

than three times as many, received grants, but costs increased more than 500 percent to \$554,058. Over \$200,000 more is budgeted for the current year. Grants last year averaged above \$5,300 a child, more than twice Washington's average.

Officials in both the District and Maryland concede that the tuition grant programs have been inherently discriminatory. They blame soaring costs, however, on private schools' increasing their tuitions—often in anticipation of increased state support available to parents of handicapped children.

Washington's new Associate School Supt. John L. Johnson, who is trying to reform the District's tuition grant program, says flatly, "In the past, a large number of children whose parents had influence with Congressmen and with the school board were able to get tuition grant payments." Parents, he adds, who were "not skilled at negotiating the bureaucracy" ended up on waiting lists for grants, which currently total about 500.

Maryland's administrator of tuition grants, Richard L. Gamble, who has been in the job for a year, acknowledges also that his state's excess-cost program is used disproportionately by people "who are more sophisticated and have the know how."

With only one full-time person in any school system concentrating on getting state aid for its handicapped children, Montgomery County last year got the highest number of grants, 34, nearly 30 percent of the statewide dollar total. Baltimore City, with the highest concentration in the state of children from low-income families got only five grants. A number of rural counties, like Wicomico, Garrett and Washington, had no excess cost grants.

Besides the excess-cost program, Maryland grants local school districts \$1,000 for each handicapped child in their school systems. This program cost \$11.9 million last school year, with \$2.2 million of the amount paid out for private schooling.

In addition, three counties—Montgomery, Prince Georges and Howard—provide their own grants for private schooling. In Montgomery some of these grants can even be used for placing children with behavior problems in military schools.

In the District, an income breakdown for the 505 tuition grants shows a majority of the awards, 346, went to families with less than \$10,000 income. Forty-five children receiving grants, however, came from families earning \$20,000 or more yearly. Six families were in the \$30,000-plus income bracket.

Many lower-income parents in Washington are still on waiting lists for tuition grants, although the situation has improved in the last year or so. Such persons have had an advocate in the Information Center for Handicapped Children, a small dynamic office funded directly by the U.S. Office of Education and independent of the school system. The center, which has also made the first local attempt to catalogue all programs available for handicapped children, is scheduled to go out of business at midyear.

Despite such special help many lower-income parents—as well as many in the middle income brackets—cannot make up the difference between the government grants available here and the high cost of special private schooling.

In calling for a \$6,000 limit on excess cost aid in Maryland, the state education department is raising an issue that may well have to be settled by the state legislature, which has set no limit on the amount that can be spent for individual cases. Some organizations for handicapped children have argued that the state department had already violated the intent of the law by limiting grants, before the general ceiling was proposed.

The department's memorandum to the board argues that the primary reason for setting an excess cost limit is that private

school tuitions are soaring "to astronomical levels." Experience in other states has shown, the memorandum continues, that setting a grant limit forces private schools to use a sliding scale for tuition based on parent income. The limit also would "encourage shopping around to obtain adequate service at the best price," the memorandum adds.

To illustrate the current situation faced by some private schools for handicapped children which depend almost exclusively on the excess-cost program to pay their tuition, a specialist in the field sketched this scenario:

"I don't mean to say that people running private schools are motivated solely by money, but you can't ignore the economic side of it. Let's say you and I wanted to start a school for emotionally disturbed adolescents. We would describe ourselves as a therapeutic day school staffed by young, emphatic teachers and aides who use positive reinforcement techniques and milieu therapy to effect behavioral changes.

"We would set our enrollment at 30 boys and girls and our tuition at \$6,000 for a 10-month year, all of it probably coming from excess cost or insurance. That's a gross of \$180,000. Okay, we hire three teachers at \$12,000 apiece and three young aides at \$5,000 each, so that's \$51,000 in salaries. Of course, we both teach part-time, giving the school a very impressive staff to student ratio, much individual attention.

"We pay out \$6,000 a year to rent a church Sunday-school hall, \$10,000 for supplies and equipment, \$5,000 for food, \$1,000 for utilities—roughly a round figure totaling about \$80,000 for all costs. Subtracting that from our gross of \$180,000, leaves us with a very substantial \$100,000. We both could make \$30,000 a year and leave a good bundle for construction of a permanent building and expansion. It's a pretty good proposition, and nonprofit too."

In Washington, Dr. Johnson is also concerned about private schools and the services they are providing handicapped children. He is planning to ask each private school with a child supported by a District tuition grant to outline every year a specific program for the child with specific goals, then report back at the end of the year on whether objectives have been met.

Johnson would also like to contract with specialized schools to take a class of District students, supported by tuition grants, and a District teacher as a trainee. After a year or two, the trained teacher and the class could be incorporated in the public school system.

"That would be a way of testing the commitment of private schools to the community," he said.

DON'T LOOK THROUGH THEM . . .

Like black people, Chicanos, Indians, women and some others—handicapped people are now being discovered as a neglected class. The handicapped, particularly the retarded, do not speak out for themselves; their parents or advocates are their voices.

"We are a new breed. The day parents came out of the backroom was the day the children came out," said Carole Hosey, the mother of 9½-year-old Stevie, who is categorized as profoundly retarded.

"We want you to know our children," she says. "We want you to ask questions, to stare at them—if you wish—but not to look at them as if they are transparent. Look at them carefully, because they are a part of life."

Mrs. Hosey, the Bethesda wife of a civilian employe of the Department of Defense and the mother of four "normal" children, and Hilda Ederer of Rockville, the mother of two children diagnosed as retarded, agreed to speak on the record recently to a Star reporter.

They spoke openly, candidly about their frustrations and tensions at caring for their

children, who are—infinitely more difficult to care for than the most troublesome "normal" infant.

They also spoke angrily about pediatricians and purported experts in the field of retardation—the professionals who know pathetically little about the unused potential of retarded children and who continually discourage and delude parents.

"We need the truth more than anybody else," said Mrs. Ederer. "We need the truth early so we can find help for our children. If we are made to look through rose-colored glasses, we aren't helping our children."

Mrs. Hosey remembers a pediatrician who called her child "a moron," and a neurologist who said, "If you had eight hours a day and 20 years, maybe you could teach Stevie to feed himself."

She also remembers with a touch of bitterness other doctors who urged her and her husband to put Stevie in an institution and forget about him. "There was so much willingness to eliminate the child, because they did not consider him a productive member of society," she said, "but we only thought of him as our child and we did not feel guilty about him."

Both Stevie Hosey and Julian Ederer, who is 8½, have made remarkable progress in the last few months. They are enrolled in a special training program at Great Oaks Center in Silver Spring, a state institution for retarded children. There psychologist Howard Reuben uses operant conditioning—a system of positive rewards and step-by-step repetition—to teach the children to feed, toilet and clothe themselves.

"A miracle," is the way both mothers described that precious moment when they saw their boys for the first time dip a spoon into food, raise the spoon unaided to their mouths and eat the food. "Stevie had never eaten a cookie himself—imagine a 9½-year-old child who had never eaten a cookie by himself—but he does now," said Mrs. Hosey.

Neither mother now entertains inflated ideas about the ultimate capabilities of their children. They share, however, a deep anger at the system: A system which regularly has written off certain categories of handicapped children, their children, as hopeless.

THE EXPENDABLES: NEW TERMS NEEDED?—V (By John Mathews)

After weeks of examining programs for handicapped children and adults in public and private schools and in state institutions, there are some images which are hard to erase:

At Lynchburg Training School and Hospital in a ward for children confined to wheelchairs and beds, there is a 5-year-old boy whose arms and legs will never develop. In place of limbs, he has little stunted flippers. His condition is believed to have resulted from his mother's taking the drug Thalidomide—which several years ago was found to cause birth defects—during pregnancy. The child is not retarded and does not belong in an institution for the retarded, but the state has no other facility for children like him with severe physical handicaps.

Linwood School, a private institution in Ellicott City, Md., has a program for autistic children—victims of a largely unexplained disorder which leaves them unable to communicate, locked into what has been described as a "cage of unbreakable glass." In a class for young children, a little girl holds a scrap of paper in front of her eyes and constantly chases what may be to her an imaginary butterfly. A 7-year-old boy endlessly tries to put too many plastic chips in a small container. He repeatedly reaches an intolerable level of frustration, flings the chips across the room, then later begins his futile cycle again.

In a dark room at an isolated recreation department building in Anacostia Park, 11 children, 8 to 13-year-olds, take part in a

two-hour play program five times a week. None of the children, all of whom are diagnosed as retarded, has ever been in a public school. Their mothers have not been able to cope successfully with the bureaucracy, in some cases being told by principals that there is no place for their children in school. "I want my child to learn her address and telephone number, to learn to count and read," says one mother. "She needs more than recreation; she needs an education."

In all the state institutions, there are hospital wards where children and adults with a variety of defects which cripple their brains or nervous systems see life through the ever-present bars of hospital beds. Dedicated attendants—and there are many in the badly neglected state hospitals—painstakingly feed them, change them and wheel them to sun porches and television-viewing areas. The lack of physical therapists in the past, and inadequate therapy programs at present, mean that at least some of them are permanently condemned to bedridden lives, doctors say, though some may have had a chance of becoming at least partially mobile.

Initially, you are shocked by these schools and institutions; perhaps, for that matter, even repelled by the cruelties of nature, disease and heredity. Mongoloids, hydrocephalics, the brain-damaged and the retarded are beyond our narrow view of what constitutes normality in appearance and behavior.

But, when a middle-aged retarded woman at the Lynchburg institution makes you read a letter from home and tells you of the joy she anticipates from the expected Christmas visit of her parents, the initial uncomfortable strangeness you feel begins to dissolve.

Or, when an autistic child, who does not speak or hear what you say, touches your face and clasps your hand or when a group of so-called emotionally disturbed boys get you to join and mediate their intense kickball game, the fear and insecurity of encountering people who are different wears off.

As an attendant who takes care of patients with severe handicaps and physical deformities in a state institution's hospital ward put it, "We don't think of them as patients. They're people to us."

To most of the rest of us, handicapped children and adults are not people. They are, instead, abstractions—medical problems we hear or read about. Essentially, they are invisible, hidden people from whom we have carefully shielded ourselves.

In schools, handicapped children—the blind, the deaf, the retarded, the emotionally troubled or the physically impaired—are usually confined to special classes or to separate schools. It has become fashionable to call them "exceptional." Their programs are even labeled "special education."

That term particularly infuriates one parent of a retarded child, James P. Chapman of Silver Spring. "It sounds like you're getting special treatment, like a charity case. We should get rid of the term and just call it public education," he said.

Chapman, who has headed a committee of the Montgomery County Association for Retarded Children now planning a radically new way of ending the segregation of many retarded persons, is also irritated by other traditional terms. "'Trainable retarded' and 'training schools for the retarded,'" he said, "are fine for animals in the zoo, but not appropriate names for people." The term "educable retarded," Chapman added, "seems to make the assumption that all other retarded people are not educable."

His own organization is now planning to substitute "retarded citizens" for "retarded children" in its title. "If you think of a 30-year-old person as a child, he will act as a child," he said. "It's a self-fulfilling prophecy."

Society has found it easy to segregate the handicapped, because it does not view the hidden and invisible people as a direct threat.

Handicapped children are unlikely to ever march on the school board and retarded adults have never been known to stage a revolt in a state institution.

The deliberate segregation of the handicapped and their resulting invisibility have led to their traditionally low rating on the priority list of educational and community programs. "We have long been the bastards of educational and social services, put out of the family deliberately and forgotten," said one specialist in the field.

Beyond the inadequate funding, the incomplete programs for the handicapped in public schools, and the sorely neglected state institutions, there is a larger issue at stake these days. It deals with the basic relationship between handicapped people and the so-called "normal society."

So far, what has become known as the "normalization principle" is usually discussed when dealing with the retarded, the largest category of handicapped people, but its implications apply to other handicaps as well.

The principle has been defined by Bengt Nirje, a specialist on the retarded in Sweden, where the principle is being practiced, as "making available to the mentally retarded patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society."

What this means is that retarded and other handicapped people must become as much as possible a part of society, living and working in the community, managing their financial affairs, making decisions for themselves. The vehicle for integrating the retarded into the community is the group home where retarded children—or adolescents or younger and older adults—can live beyond the wards of institutions with the assistance of non-retarded houseparents.

The concept has revolutionary implications for school programs. It means that many schools will have to change the objectives of their programs from preparing retarded people for life in an institution or in a sheltered family to semi-independent living in the community. If successful, the movement will hopefully reduce the number of people generally condemned to a life isolated from society.

So far, the movement towards normalization is largely a European phenomenon, but a healthy start has been made in this country in the states of Nebraska and Washington. Locally, the Montgomery County Association for Retarded Children is planning to open a network of group homes for the retarded in the county beginning this year.

The county program would start initially with probably four "training hostels," homes where young adult retardates, mostly over age 16, would gain their first experience in living away from home or an institution. They would be enrolled in job training or school programs while living in the group home. Each home would have no more than eight retarded persons, plus houseparents. In time, some of the retarded people would be expected to leave and find a place in the community with or without supervision.

Eventually, the county plans calls for establishing group homes for infants, 3 to 5-year-old children, adolescents, young adults and older retardates. One special home, called a crisis relief unit, would offer temporary residence for retarded children and young adults whose families are experiencing a difficult period, or simply need placement for their retarded family member in order to move or take care of some family business.

Chapman, an IBM computer salesman who headed the county association's committee planning the group home network, visited Omaha and Lincoln, Neb., to see five residences and apartment living units now serving 50 mildly and moderately retarded young and older adults. The program there is operated by a unique five-county agency, called

the Eastern Nebraska Community Office of Retardation.

Chapman likes to cite the case of John Bynum, who became something of a celebrity when he was named handicapped employee of the year in the state. Now 46, Bynum spent 38 consecutive years in a Nebraska institution for the retarded until he entered a group home two years ago.

Bynum is black, has a speech impediment, experiences seizures and lacks a formal education, because his club foot prevented him as a child from climbing to the second-floor classroom in the institution where he grew up. A psychologist once said he was "totally incapable of functioning" outside the state institution for the retarded.

For the last two years, Bynum has operated a dishwashing machine at a hospital, never missing a day of work. He discovered at one point that the washing line had been set up incorrectly and suggested improvements that were carried out.

Chapman feels there are hundreds of John Bynums in Montgomery County and elsewhere, who have been cheated of the right to a normal life.

If society gives them a chance to show they are people, and not problems, perhaps they will reach that goal, he adds.

WRC-TV EDITORIAL: "HIDDEN PEOPLE"

We, as a society, have for years, deliberately segregated ourselves from the retarded, the emotionally disturbed and the physically handicapped. We have hidden them away from our thoughts and priorities. As a result thousands of people, especially children, have been excluded outright from the public education and job training that could have led them to a healthier, happier, more productive life.

In the District, it is estimated that as many as 15,000 children require some form of special education, yet less than 5,000 are getting even minimal help. Hundreds more are not receiving any education or training in school at all.

No one in the District government or on Capitol Hill has ever officially acknowledged an obligation to educate these unfortunate children. Only this year Congress began to recognize the extent of the D.C. school problem. Funds, for the first time, are available to seek out and hire more highly trained teachers, buy the sophisticated equipment needed and set up special schools for emotionally disturbed—something the District has never had before.

However, corresponding needs for these people such as vocational services—have been and still are neglected or ignored. They are under the Human Resources Department and there is where more effort must now be made. Without vocational services, the handicapped are thrown out of the schools into a void—left, again, to waste away the years.

We have an obligation to these hidden and forgotten people—we can and should no longer avoid it.

THE LEGAL RIGHTS OF THE RETARDED

Accounts of gruesome and pitiful conditions in mental hospitals have been regularly reported in the press in recent months. Few states are without their human warehouses where large numbers of the sick and retarded are allowed to be stacked indefinitely on shelves of despair and deprivation. In many places, perhaps even all, inhumanity to the retarded is not intentional nor the result of designed contempt; instead, the sorry treatment of so many proceeds from lack of money and lack of staff—traditionally the twin causes of institutional neglect.

The situation is grim but not entirely hopeless. A recent order by a federal court in Montgomery, Alabama, may mark the beginning of a new national attitude toward people who are mentally retarded. Judge Frank M. Johnson Jr. ordered state officials to cor-

rect conditions at the Partlow State School and Hospital at Tuscaloosa. The evidence seen by Judge Johnson "vividly and undisputably portrayed Partlow as a warehousing institution which, because of its atmosphere of psychological and physical deprivation, is wholly incapable of furnishing treatment to the mentally retarded and is conducive only to the deterioration and debilitation of residents." In more personal terms, Harold E. Martin, editor and publisher of the Montgomery Advertiser-Journal wrote in his newspaper after a visit to the hospital: "I have covered wars and death in almost every kind of catastrophe during 30 years in the newspaper business but was totally unprepared for the horrors of an institution whose whole concern for the more severe cases is uncivilized and dehumanized custodial care . . ." Judge Johnson entered an interim order to correct immediately such things as fire hazards and unhealthful food, and to begin a disease immunization program. A March 31 deadline was issued for the hiring of 300 staff persons; this deadline has already been met. According to one observer, this is the first time a court has ever held that mentally retarded persons involuntarily confined in an institution have a right to adequate treatment and care.

The importance of this decision lies in the fact that not only has actual help been given to thousands of the retarded in Alabama, but that the decision may have a positive affect nationally. Other suits may be brought involving other hospitals. Already, a proposal has been made by the American Civil Liberties Union, the American Orthopsychiatric Association and the Center for Law and Social Policy—a Washington public interest law firm—to form a national council on the rights of the mentally impaired. Through test case litigation, the council would identify and implement the rights of the mentally ill and retarded. As the group notes, "mental impairment is more than just a health problem for our society. It is also a pressing legal problem. Despite their numbers, the mentally impaired are among our society's most abused minorities . . . The hospitals in which these persons are confined are often worse than prisons and the 'treatment' which is the purported justification for such confinement is often nonexistent."

Successful court cases are an important and obviously much-needed way to guarantee the rights of the retarded. Ideally, states should not have to be forced to provide adequate treatment, but since legislative appropriations for mental health are often small, decisions like Judge Johnson's will become more and more crucial. It is also welcome news that mental health lawyers will be active.

SUPPLEMENTAL AIR TRANSPORTATION EXCEEDS CONGRESSIONAL AUTHORITY — ADMINISTRATION DEPARTMENTS ARE WRONG IN THEIR INTERPRETATION OF THE LAW

Mr. RANDOLPH. Mr. President, many months ago the Civil Aeronautics Board proposed the creation of a new concept in air transportation called the "non-affinity charter." In late December of 1971 the Board moved toward adoption of this proposal by issuing a notice of proposed rulemaking. Under this notice the name of the new concept would be changed to "travel group charter." The proposal, however, differs little from that which the Board originally announced.

I bring this matter to the attention of the Senators because it seems to me to

be a very unfair proposal. The air transport network of the United States is unsurpassed in any other country of the world. It provides a system of regular and predictable scheduled services to smaller communities as well as to large ones, and in times of low traffic demand as well as in times of high traffic demand. This system of air transportation came into being by virtue of the wisdom and foresight of our predecessors in the Congress. In 1938 they adopted the Civil Aeronautics Act, which I assisted in drafting and passing in the U.S. House of Representatives, when a Member of that body. The legislation placed duties on the shoulders of the scheduled airlines in exchange for the rights which were granted to them. Since the enactment of that original measure the scheduled carriers have responded well to this combination of responsibility and right. They have produced for us an air transportation system which has strengthened the mobility and the security of our Republic and of our traveling and shipping public.

After World War II a second type of airline came into existence. It was known as the nonscheduled carrier. Such a carrier was authorized to operate by the Civil Aeronautics Board, using its exemption authority, on condition that its operations would be truly nonscheduled, and that those operations would not interfere with the services provided by the scheduled airlines.

Mr. President, these carriers, in my opinion, far exceeded the scope of their operating authority and was not in accordance with the terms of their operating permits. Moreover, the courts held that the authorizations issued by the Civil Aeronautics Board exceeded those which were permissible under the Board's exemption authority.

To solve this problem the Congress, in 1962, amended what had become the Federal Aviation Act so as to provide a proper statutory basis for certification of the nonscheduled airlines. By that legislation it called these airlines supplemental air carriers, defined them, and defined the permissible scope of their activities in air transportation. We established two tests: First, that any air transportation they would be authorized to perform would fit within the meaning of the word "charter"; second, that they could only provide such air transportation as would supplement the scheduled services.

I am sure that the Civil Aeronautics Board recognizes these limitations and will apply them in determining whether the supplemental air carriers should be authorized to perform the new travel group charters. In my view, this type of air transportation cannot be considered as a true charter, and authorization of the supplementals to perform this type of air transportation would amount to authorizing the supplementals to supplant, rather than supplement, the scheduled services.

All persons desiring to do so were permitted to file comments on the Board's new proposal last month. Many comments were filed, some in support of the proposal and some in opposition. I am

particularly disturbed, however, by two filings which came from the executive branch. These comments were submitted by the Department of Justice and the Department of Transportation. Both comments seem to ignore the standards established by the Congress for determining what type of air transportation authority should be granted to the supplemental carriers. Instead, these two Departments have embraced what they call the "substantial impairment" theory. In other words, they appear to tell the Board that it may authorize the supplemental carriers to carry passengers and cargo so long as their activities do not "substantially impair" some given level of scheduled service.

I emphatically point out the administration that this is not the law. I further tell the administration that it has no power to make the law. That is the function of Congress, and Congress has set the boundaries defining supplemental air transportation. We expect the Board, as an administrative agency created by Congress, to follow the law.

TRIBUTE TO SENATOR GOLDWATER

Mr. BROCK. Mr. President, throughout his public career, the Senator from Arizona (Mr. GOLDWATER) has been a staunch defender of Taiwan, the leading spokesman in this country for the defense of that nation against potential aggression from the mainland. The free men and women of Taiwan could have no better champion in the Congress of the United States than this man who has taken up their cause against those who would write them off as sacrifices on the bloody altar of detente.

With such a distinguished record behind him, it is no accident that Senator GOLDWATER is admired, respected, and supported by millions of Americans who share his concern for the defense of this Nation and allied nations against Communist aggression and subversion. As the Senator said about himself in addressing the Young Republicans Leadership Conference on March 10:

... I am a very vociferous, strong champion of Nationalist China, and will still be. ...

Mr. President, it took a very special kind of political courage for the man acknowledged as the foremost American champion of a free and independent Taiwan—for a man known throughout the world as a crusader against communism and all forms of collectivism—to support his President when he visited the People's Republic of China last month. It took a special kind of man to take the lead in defending the President against the attacks of many men and women who have been his friends and political supporters for a decade or more.

But Barry Goldwater is that kind of man—very special. I know. I will always hold a place in my heart and mind for him as an example of integrity, courage and conviction which I believe constitutes the standard which the rest of us must strive to attain. His action in this regard, in supporting a President because he was right, again illustrates the point only too well.

Since he spoke out in defense of the President, the Senator from Arizona has been the object of an often bitter attack by many Americans who in my opinion should know better. There is something very dispiriting in this reaction—dispiriting and disquieting. BARRY GOLDWATER, Mr. President, represents the best that is in us. Throughout his time in the Senate, he has earned and gotten the respect and admiration of many men within and without his party who disagree with him on specific issues yet can never doubt his decency, intelligence and character.

I know beyond the shadow of any possible doubt that there is not a man in this body who sympathizes with the goals and tactics of the Chinese Communist Government of the People's Republic of China. I know that the overwhelming majority of Americans are vehemently opposed to what that government and its accompanying ideology represent. Yet, in the face of that, most of us in the Senate and a huge majority of Americans approve of President Nixon's trip to China. We have come to realize that the government of mainland China constitutes a force in the real world with which we must deal. Certainly President Nixon harbors no illusions on the humanity of that government—but he also harbors no illusions on what it will take to build a generation of peace throughout the world.

In supporting the President's initiatives in the Pacific, none of us has been the object of the attacks which Senator Goldwater has suffered. It is not as though these attacks were unexpected. It is not as though there was no other course open to him. But he chose the right course knowing what the price would be.

It is a source of satisfaction to me that the Senator, not his detractors, reflects the overwhelming response of this Nation—Republican and Democrat, liberal and conservative. It is an honest response, rooted in faith in our President and faith in the ability and character of free men.

WELFARE REFORM: THE TIME IS NOW

Mr. HUMPHREY. Mr. President, poverty is a condition of life that most Americans do not have and are not likely to experience. For some Americans though, poverty is real and depressing. Life for poor Americans is indeed bleak. To go without eating, to lack money for decent shelter and adequate clothing, to say again and again to one's children, "No, we cannot buy a new pair of shoes or a new toy," to be without the standard elements of human comfort is an existence with little reward and much heartache.

Simultaneously, the poor, the welfare recipient, and the hungry are the most vilified, least understood segment of our population. We can close our eyes and hope they will go away or pretend that we do not see them, but they remain, a testimony to an affluence that has not yet arrived. And, always, the poor live on the other side of the street, or across

the tracks, or beyond the bend in the river.

In August 1969, the President of the United States, in his welfare reform message, called upon the Nation to accept the notion that "a measure of the greatness of a powerful nation is the character of the life it creates for those who are powerless to make ends meet."

Welfare rolls continue to spiral. From 1960 to 1969, rolls increased some 4.4 million. The Department of Health, Education, and Welfare estimates that left unchanged, rolls will increase until, in 1977, the level will reach 20.3 million. The public assistance figures for September 1971 indicate that some 12.9 million recipient families received aid. There were an additional 2 million individuals receiving aid under the adult categorical program.

In our urban areas, the scope of public assistance is even more frightening. New York, according to data from the National Center for Social Statistics has 13.4 percent of its population on welfare. In St. Louis, the percentage is 12.5. Philadelphia has a percent rate of 11.5 and Boston-Suffolk has 15.3 percent of its population receiving public assistance.

Cost figures, in terms of dollars, have also increased. In 1960, the Federal Government spent 2.05 billion on public assistance. Expenditures estimates for 1970 indicate that total outlay for assistance, exclusive of medicaid, administrative, and general assistance will be about 10.2 billion. Of that total, the non-Federal share is about \$4.481 billion and the Federal share equals \$5.795 billion. Once medicaid, administrative, general assistance, and social services are included the total cost increases to an estimated \$20.939 billion, with Federal cost estimated at \$11.6 and non-Federal cost at \$9.3 billion.

Something is wrong and something must be changed.

GOALS OF WELFARE REFORM

First, we can and must put an end to hunger in America. We must end forever poverty-related malnutrition. And, to do it will require both an expanded food stamp program and a basic benefit level above \$2,400. We simply must have a national goal to end hunger in this Nation.

Second, we can and must enact a system that treats recipients fairly and provides coverage for all the needy—not just families, or the elderly, or those who are physically disabled.

Third, we must maintain and strengthen the family. We can begin by providing assistance to the working poor, by providing adequate day care centers, and by expanding job training and public service employment at a fair minimum wage.

Fourth, we can and must simplify the administration of public assistance. Administration should be federalized; red tape should be reduced; and employee protection for social workers and support personnel should be assured.

Fifth, we should guarantee that no recipient receives less assistance under a reformed welfare system than he does receive under the present system.

Sixth, we must assure that a reformed

welfare system must be as fair to the middle and moderate income taxpayers as it is to the recipient. We must guard against fraud and deception and provide an opportunity to work for those who can work.

We can and must provide fiscal relief from the crush of local taxes. We can do so by federalizing the complete cost of public assistance and by closing the loopholes in our Federal tax system.

Seventh, we must recognize that welfare is a national problem demanding national answers and the commitment of national resources.

WHO RECEIVES PUBLIC ASSISTANCE?

As our Nation considers welfare legislation, I believe it is highly important to keep a perspective on the problem by understanding the composition of the welfare population.

Who receives public assistance? The welfare myths would have us believe that almost all recipients are black, that all the families have 10 or more children, that all are on welfare for generations, that all recipients are shiftless or lazy, and that few of the recipients work but almost all could, if forced, go to work.

The results of the latest Department of Health, Education, and Welfare study, gives a different picture of AFDC recipients. According to this report, 48.3 percent of recipients are white, 43.3 percent are black, and 8.4 percent are other races. The average number of children in a welfare family is three, a decrease from the 1967 figures. Over half of all AFDC families have two or less children. Only 11.5 percent have six or more children. The median age of a child on AFDC is 9, with about one-third of all the children under the age of 6.

Families on welfare generally do not receive assistance more than 2 years. In fact, 51 percent of the recipients are on AFDC less than 2 years. Thirty-two percent are on less than a year. The median length is 20 months.

The employment data for AFDC fathers reveals that of those presently unemployed, 71.1 percent are normally blue collar, 6.2 percent are service workers and 11.6 percent are farmworkers. Less than 2.4 percent of all AFDC fathers have never held employment. For the AFDC mother, 13 percent are employed in regular or part time jobs; 7 percent are enrolled in training programs or are waiting for training programs; 35.5 percent did not work because they were needed in the home, caring for small children. Thirty-six percent were physically or mentally incapacitated, had no marketable skill or could not find suitable employment.

Of the missing father, 5.5 percent are dead, 11.5 percent are incapacitated, 75.4 percent are absent from the home—with 13.7 percent divorced, 15.9 percent deserted, and 27.9 percent not married to the mother. No information for the remainder.

The average monthly income of an AFDC family is \$50.65, with \$25.55 in earnings and \$25.10 in unearned income, not including assistance monies. One-half of all AFDC families participate in the food stamp program; 12 percent live

in public housing; and 80 percent have not received any family planning services.

Three of every 10 recipients receive less than \$100 aid; four of 10 receive anywhere between \$100 and \$199; and three of 10 get over \$200 a month in aid.

Categorically, the public assistance rolls are composed of 24 percent enrolled in the old age assistance program; 8 percent are in the aid to blind; 50.3 percent are children; 2.9 percent are incapacitated adults; 13 percent are AFDC mothers. Of this 13 percent, 7 percent are in training; 36 percent are incapacitated; 35.5 percent are mothers in homes; and 13 percent are presently employed; the remaining mothers are unavailable for work.

The President's Commission on Income Maintenance sums up work potential this way: Of 1.2 million people, non-aged family heads who did not work, one-half were women with responsibilities for children, one-third were incapacitated adults; 230,000 were attending school; 15 percent continually searched for work but because of economic conditions, could not find work; and less than 100,000 men were able-bodied and did not work.

Thus, of the 12.9 million people receiving public assistance, 2.6 million could be considered eligible for work. Among this number 2 million are women—mothers with children—and of these only about 44.5 percent can move into regular employment once child care, training, and jobs are assured.

Of the other 600,000 employment potentials, less than one-fifth would be considered suitable for employment. Work and potential for work boils down to this: Less than a million of the 12.9 million on public assistance, and any addition to the welfare system through the inclusion of the working poor.

This is the welfare population.

They demand our consideration and compassionate judgment, as we in the Senate make decision.

I would now like to examine the goals I have outlined.

1. ENDING HUNGER AND MALNUTRITION

No condition of human life pains me more than to realize that there is still hunger in America.

As a Senator, I was intimately involved in food programs.

As Vice President, I worked for child feeding programs, for school lunches, and for food stamp programs.

Now once again as a Senator, I pledge to continue the battle against hunger.

FOOD STAMP PROGRAM

I believe we have made a start by providing additional funds for the food stamp program. More families than ever are using stamps. And, with proper regulations, increased funding, the relaxing of eligibility requirements and a sympathetic Presidential leadership, we can continue to increase participation.

But, we must remember that a cash-out of food stamps is really a cash-down if hunger is not reduced. Food stamps should not be cashed out if the net effect of such action is to reduce the purchasing power of the poor, and if such action will lead to an increased utilization for the

commodity distribution program as now legislated and operated—a program which food stamps were designed to replace.

The food stamps cash-out under the House bill increases the probability that in some States, if these States do not maintain current benefits, total dollar benefit will be reduced. A family of four in Michigan presently receives, if they have no other income, an AFDC benefit of \$3,156. This family is eligible for \$444 in food stamps, for a total benefit of \$3,600. Under the House proposal, the total cash benefit, assuming the States maintain current levels, would be \$3,165; but food stamps no longer exist; the result would be a \$444 loss in benefits for this family. On the other hand, a State such as Louisiana, which only has a total benefit level—cash and food stamps—of \$2,304, the recipient family would gain about \$95.

Overall, if States do not maintain benefits at the current cash-plus-food stamp levels, recipients in 46 States will have welfare payment cuts.

COMMODITY DISTRIBUTION PROGRAM

Indirectly, the House action on food stamps increases the pressure that the commodity distribution program will double and triple in size and scope. The House bill, while it does ban recipients of family assistance from participation in the food stamp program, does not ban recipients from participating in the commodity distribution program.

The commodity program is filled with errors of design and operation which work to the disadvantage of the poor. These errors have been well documented by hearings before the House Committee on Agriculture, Senate Committee on Agriculture and Forestry, a Select Committee on Nutrition and Human Needs, and before citizens groups such as the Board of Inquiry Into Hunger in the United States. The problems of the commodity program are familiar: Transportation centers far away from the population; restricted hours; heavy weight of the commodities; inadequate nutritional value; insufficient quantities of food; irrational and illogical application for eligibility procedures.

The greatest failing, though, of the commodity programs, from the standpoint of being an integral part of any income maintenance scheme, is that the support and concepts which underlie it are farmer, not welfare recipient, oriented. The Nixon administration bluntly intimated this fact in its response to the recommendations of the White House Conference on Food, Nutrition, and Health:

... we maintain that commodity programs are of a different nature. Their primary thrust is to help balance the agricultural economy rather than to provide income substitutes. They serve a different constituency than that concerned with health and nutrition. (Page 77, Comprehensive Report, White House Conference on Food, Nutrition and Health, February, 1971)

This statement will remain as a serious and fatal indictment of the commodity programs as nutritional improvement mechanisms.

CASH ASSISTANCE

Cash assistance, not just for families but for all needy is a key element in ending hunger. But, the cash income must be adequate.

I have previously introduced legislation that would lift about 6 million elderly out of poverty. We can do this with an immediate financial increase in adult categories and in social security benefits.

The \$2,400 annual assistance for a family of four is at least \$1,500 below the Government's own recognized poverty line. The \$2,400 family assistance for a family of four in deficit when one realizes that the changes mandated for the adult categories would provide a \$2,400 benefit level for an aged family of two. Surely a four-person family has more dollar needs than a two-person family.

The poverty level for a family of four is at least \$3,000 below the lower living level budget of the Bureau of Labor Statistics. In my own city of Minneapolis, the Bureau of Labor Statistics estimates that the total cost of four-person family consumption on a lower income budget is \$5,561, including \$1,866 for food, \$1,465 for housing, \$492 for transportation, \$843 for clothing and personal care, \$540 for medical care, and \$355 for other expenses. In addition, it is estimated that such a family will pay \$343 in social security and disability insurance and \$892 in personal income taxes. A \$2,400 level without any supplementation is woefully inadequate.

THE COST

The reason usually offered for not increasing the benefits is cost. Public welfare cost today, including medicaid, administration and emergency assistance, totals \$21 billion, of which \$11.6 is Federal and \$9.3 billion is State and local funds. A family program with a \$2,400 Federal base costs excluding administration, medicaid, and emergency assistance, \$9.1 billion increasing that base to the \$3,600 for a family of four would cost \$15.8 billion. This figure, some argue, is unrealistic, beyond Federal budget capacities, and remains but a goal for some distant future action.

But, there is another dimension to the cost datum—the human cost. What does it cost if we do not increase benefits? What does it mean in terms of sustained malnutrition—in terms of babies and children who are underfed, who go to bed night after night hungry, who exist on staples of beans and grits?

What does it cost society to keep people in perpetual states of inactivity, or listlessness, or nonproductivity? What is the cost if families do not have adequate shelter or plumbing facilities? What is the cost of combating disease aggravated by the lack of sanitary conditions?

What is the cost in terms of babies yet unborn who upon birth have a 30-percent less chance of survival the first year, three times the chance of normal children of being mentally retarded because they are likely to be undernourished, not likely to finish elementary school, let alone high school and have better than an even chance of being on the same welfare system their parents so deplored and so hated?

The immediate solution is this: Increase the benefit level and do more for those who have less. We are a great country; surely we can take care of our people.

There are a variety of alternatives to a static Federal floor. We could increase the floor each year by a percentage of the poverty level until at some time in the future the poverty level becomes the Federal minimum. Or, we could provide that the floor increase a percentage of the family food consumption component of the Bureau of Labor Statistics low-income budget, until that component becomes the Federal floor. Or, we could change the ceiling each year by enacting new legislation. However it is done, it is my opinion that an escalator should be a part of the legislation—to move the basic Federal payment to levels of adequacy.

Finally, we should build into any Federal payment a cost of living and regionalization factor. It is only fair and equitable that differences in living expenses be recognized as a legitimate ingredient of welfare cash assistance.

A sound food assistance program and an adequate Federal income program can help accomplish the goal of ending hunger—the most urgent domestic priority.

2. ADEQUATE COVERAGE

The second goal is adequate coverage.

The family assistance plan covers only those poverty families with children. It does not cover the 1.8 million childless couples living in poverty nor does it cover the 2.3 million single adults living in poverty.

The plan assumes that these individuals will be covered by State welfare payments. But not all States pay what is called general assistance—benefits which go to those who do not qualify for the regular categories of assistance.

Conceivable, this omission could be a subtle pressure for a childless couple to have children—at least then they could receive family assistance.

A national program should cover all the needy.

3. WORK OPPORTUNITY

In the United States work is honorable and it is expected. Those recipients who can work should work. And, indeed, data tends to support the conclusion that almost all recipients able would like to work—if only jobs were available.

However, to make work opportunity more effective, we should spell out in detail what is and what is not suitable employment. And, we should assure that day care, public service, and upgraded training will be available.

Day care and public service employment are vital to any welfare reform. Without them, reform legislation could only institutionalize a welfare crisis.

The Department of Health, Education, and Welfare estimates that 1.3 million children will require day care if H.R. 1 becomes law. Cost figures for these children vary between \$1,600 and \$2,000 a child. But, present day care programs provide services for less than 250,000 children. And there are serious questions whether or not the funds in H.R. 1 are sufficient to meet this need. The House committee report states that well-de-

signed child care including educational, health, nutritional, and other services should be the basis of our child care programs.

H.R. 1 also provides for 200,000 public services employment jobs. This is vital to the success of a comprehensive welfare program. However, we must be certain that at a time when the economy is sluggish and depressed, as it is now, we provide sufficient public service jobs.

Public service jobs are not necessarily dead end meaningless jobs. Public service can be jobs of opportunity and a path to career mobility. I have called for 1 million public service jobs. I would hope the Congress and administration would enact at least that many jobs.

INCENTIVE

There is one other work opportunity feature of the welfare program that should be examined: incentive to work.

One of the major problems with the present welfare system is the lack of incentive for the working poor to earn additional dollars. Under the present procedures, earned income is deducted from the benefit at a rate of \$30 and one-third the remainder. Unearned income is reduced dollar-for-dollar from the benefit check.

I believe the working poor must be included in any welfare program—either as an integral part of program or as part of a pilot project that would be automatically triggered into effect.

I favor a work incentive of 50 percent—allowing the working poor to keep 50 cents of every dollar.

It is my feeling that a restricted and regressive 67-percent incentive rate as presently slated will actually be a disincentive. The Heniman Commission has said that a 50-percent tax rate is better than a 67-percent tax rate. A 50-percent tax rate does increase program cost, for it increases the break-even level and brings more potentially eligibles into the program. But, it also provides an adequate work incentive that may hasten the removal of the recipient from the welfare rolls.

4. ADMINISTRATION

Although I strongly favor the assumption of welfare administration by the Federal Government, I also believe that administering the program should be as simple and as concise as possible. I am fearful that splitting responsibility between the Department of Labor and the Department of Health, Education, and Welfare, though admirable, might increase the difficulty of coordination, increase the red tape, and increase the confusion.

A. APPLICATIONS

The application procedure of the House bill is vague and unclear. On one hand, the language does specify what happens when the recipient fails to file his income report—the recipient is summarily cut off from benefits. And, if the failure to file persists, then benefits for any subsequent reapplication are reduced by a specified dollar amount.

On the other hand, the procedure for filing an application and the kinds of information that are to be included on that application remains the realm of secretarial discretion. What kinds of "data

and material" must the recipient file—income wage statements, home ownership policies, birth certificates, death certificates, baptismal certificates, income taxes, car titles?

If we are going to have complicated eligibility and certification procedures, then we should be legislatively specific as to kinds of data and material that the potential recipient must supply. In the long run, I believe we can guard against fraud and illegal acts and still have a certification system that is simple and rapid.

B. REVIEW AND HEARINGS

It is in the hearings and review proceedings that capriciousness, while maybe not deliberate often, is more a function of the fact that the welfare recipient often does not know his rights, is not informed in clear and understandable language of them, or is just too scared to speak for those rights. Given the history of welfare procedural review, it would seem necessary to specify as clearly as possible the rights, regulations, and provide for the publication and communication of those rights.

C. LOCAL COMMITTEES

The House bill provides for local advisory boards to evaluate and "report on the country to evaluate and 'report on the effectiveness of the program.'" The language of the bill says that each committee "shall consist of equal numbers of representatives of labor, business, and the general public, as specified by the Secretaries." Just what does the "general public" mean? Does it mean that welfare recipients are to be included or excluded?

We have had numerous Federal programs in which the consumers of the program have no opportunity to participate in the design or the evaluation of the program. In fact, social scientists are agreed that the failure to ask the poor, to consult with them, and obtain their thinking about policies which affect them is one cause behind the failure of many social programs. Since recipients of public housing aid have served on the board of the public housing authorities and food stamp recipients have served on food stamp advisory committees, does it not make sense to allow welfare recipients to serve on a board that will be charged with evaluating the delivery capacity of the family assistance plan?

D. EMPLOYEES

I believe that State and local government employees should be assured of accrued rights during the transition from State to Federal administration. We must and should protect the right of those workers who might be assimilated into the federal system and I believe that we should assist all others to find new and equally productive jobs.

It is important also to have workable accounting income procedures. We simply must make every effort to be as current and as fair as possible in the calculation and definition of a recipient's income for assistance payments.

5. MAINTENANCE OF BENEFITS

It seems axiomatic that any reform of the present welfare system would at least guarantee that recipients would not re-

ceive less cash benefits than they are presently receiving.

The Federal legislation must include a maintenance of benefits clause. States must be mandated to provide present levels of benefits to public assistance clients; because, in fact, if we do not guarantee existing benefits, we subtly increase the pressure to reduce benefits.

This pressure is great and may be overpowering—the burden of welfare costs is more than most States can bear.

When this pressure for a reduction in total State costs is coupled with the notion that some States do not pay 100 percent of needed standards now, the lack of a maintenance of benefit clause will likely prove catastrophic to welfare recipients.

President Nixon's once famous dictum that no recipient will receive less than his current benefit is laughable, if it were not so tragic.

The most positive way out of this dilemma is to include a maintenance of benefits clause along with a hold harmless for both people and States and a high rate of Federal participation in the financing of State supplementary welfare payments.

The essential point is this: The taxpayers of our States need massive fiscal relief from the crush of taxes used to pay welfare cost. At the same time, children, mothers, and older Americans ought to have protection against any cut in benefits.

STANDARD OF NEED

Even a maintenance of benefit clause, though helpful as a guarantee to recipients, does not provide as much in fact as in theory. It is true that no recipient will get less than current levels; it is also true, in some States, that many people do not get enough to cover their needs.

Fourteen States pay recipients 100 percent of the monthly amount for basic family needs, as these needs are defined by the State. All 14 of these States—Colorado, Connecticut, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, and Washington also have benefit levels above the proposed Federal floor of \$2,400. A maintenance of benefits provision is important in these States to assure continuance of the payment level.

Other States, such as Alabama, Arizona, Delaware, Mississippi, Nevada, South Carolina, and West Virginia, pay considerably less than the full standard of need. Alabama, for example pays only 35 percent of the standard—\$81 of the estimated \$230 monthly amount for basic needs. Delaware pays 65 percent—\$187 of a \$236 need standard. Mississippi pays 40 percent—\$70 of an estimated \$230 need standard.

For recipients in these States, a \$2,400 Federal floor will increase their incomes. The maintenance of benefit provision is not wholly applicable—though any Federal sharing of voluntary State supplementation may encourage those States to increase payment levels.

6. FAIRNESS

No one denies that there are two costs to every welfare system: to the recipient who must bear the burden of living under

the system and to the taxpayer who must pay dollar cost of the system.

The cities and the States are in financial trouble.

They need help and they need it as rapidly as possible.

There are serious reservations whether or not the relief promised by welfare legislation is sufficient to meet the crisis demands of State and local government. It could mean that the inequitable distribution of State cost which originally led to a reform of the welfare system, will be frozen into law. Those States which now provide cash payments substantially above the proposed Federal floor would not find their cost increasing, but neither would they find any State savings from their cost of maintaining benefits to the 1971 level, once the basic Federal payment is deducted.

On the other hand, those States which presently pay less than the \$2,400 level will have little or no State welfare cost under the new program. The limitation on increases in expenditures has no direct and immediate effect on these States.

Since one of the goals of this legislation is to provide fiscal relief to beleaguered States and local governments—to save the States money that is desperately needed for other programs—the Federal Government should provide for increased starting Federal floor and contribute a share of the supplementary payment States would make to recipients over and above the basic \$2,400.

This Federal participation in State supplementary payments will have three effects. First, it would provide States an incentive not to reduce benefits from present levels. This would protect welfare recipients from a cut in public assistance.

Second, it would mean that the welfare program would be on its way to true federalization. If the percentage which the Federal Government aids in State supplements was continuously increased, then there eventually would be a complete federal system of both costs and administration. Third, Federal participation would provide the fiscal relief that the high payment States desperately need.

And adequate benefit level or a phased-in increase in the percent of Federal aid for State supplements would provide the fiscal relief the States want and it would truly recognize the welfare crisis as a national and not a local crisis.

7. WELFARE AS A NATIONAL PROBLEM

The House bill recognizes that welfare is no longer a local or State problem. It is a national problem demanding national standards of eligibility, basic national benefit floors, national administration, and national distribution of the cost.

Welfare reform is but one of the "reforms" we must make this year. Hand in hand with it we must have "revenue sharing reform" and "tax reform." In fact, these three "reforms" fit together.

Our present taxing system is grossly unfair to the middle-, moderate-, and low-income individual. There is something unfair about a society that taxes

poor people while millionaires and the wealthy are allowed to escape from taxation. Yet that is precisely what happens. Poor people pay over \$5.4 billion collectively in direct taxes, \$2.8 billion in social security taxes, \$2 billion in indirect taxes, and \$14.5 billion in indirect consumer taxes.

I have previously offered amendments to eliminate the poor from Federal tax liability. This amendment was adopted by the Senate, but the Nixon administration fought it in the conference committee over the Revenue Act of 1971.

I think we must move ahead quickly on tax reform. And, I have joined in sponsoring a comprehensive tax reform proposal.

I think we must move ahead quickly on revenue sharing.

I think we must move ahead quickly on welfare reform.

The administration has delayed on these reforms all too long—they have asked for postponement in revenue sharing and welfare reform. And the administration refuses to propose a tax reform program.

As in the past, Congress must take the initiative.

These are national problems and they must receive national answers.

The time is not tomorrow; the time is now.

POLL OPPOSES GUARANTEED ANNUAL INCOME

Mr. CURTIS. Mr. President, as the Committee on Finance continues its consideration of welfare reform and the "guaranteed annual income" proposal contained in H.R. 1, I wanted especially to invite attention of Senators to the results of a recent poll taken in his State by the distinguished senior Senator from North Dakota (Mr. YOUNG).

The Senator received 11,000 responses to his questionnaire. A total of 9,327 responded to the question, "Do you favor the President's welfare reform proposal with its guaranteed annual income?" Of those, 30 percent favored the proposal and 70 percent opposed it. A very significant result of the poll was that of 274 students who responded to the question only 35 percent favored the proposal and 65 percent opposed it.

Not only does the Senator's poll reflect overwhelming opposition to the "guaranteed annual income" approach to welfare reform in his State, but it indicates that young people do not view the matter substantially differently from their elders.

In a Federal Republic such as ours, it ill behooves Congress to force upon the citizens of an entire State a program they oppose by so wide a margin. I know that the results of Senator Young's poll has been or would be substantially duplicated in many other States—almost certainly in my own.

I commend Senator YOUNG for this important contribution by his office and his constituents to the enlightenment of Congress on this and other issues. The full results of the poll appear at page 8947 of the CONGRESSIONAL RECORD of March 17.

OCEANS

Mr. NELSON. Mr. President, the current issue of the Sierra Club bulletin includes an article entitled "Long Island Sound: The Urban Sea," written by Donald Squires. It is a very informative piece, describing the threats to the environment of the sound and the beginnings now of steps to try to save it, with concerned citizens groups providing the push.

Similar stories could be told all over the country, of course: Accelerating pollution, tragic consequences, public awareness and concern, governmental efforts to stop the wastage and destruction before the resource is completely and irreversibly spoiled.

But there is something unique in the Long Island Sound story: It is not a lake or a river that is being destroyed; it is a part of the ocean itself.

"The urban sea" is the new tag for the sound. It is a term that gives little cause for comfort: If we do not act now to protect and manage the marine environment, minimizing conflicts in uses, surveying and preserving its ecology, we will quickly make the same mess of the supposedly limitless ocean environment as we have of much of our land.

I ask unanimous consent that the article entitled "The Urban Sea" be printed at this point in the RECORD, along with two New York Times articles, one just this morning reporting a 60,000 gallon oil spill in the sound from a grounded tanker, and the second reporting active consideration by the New Jersey Assembly of a measure to create an offshore sanctuary for the entire length of the State.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

LONG ISLAND SOUND THE URBAN SEA

(By Donald F. Squires)

Some 10,000 years ago the great wall of ice which covered most of northern North America stalled in its advance, retreated and advanced again. Two great ridges of sand and gravel, over 100 miles in length and up to 30 miles in width, were piled up on the Continental Shelf ten to fifteen miles off the Connecticut shore forming, when the ice withdrew, Long Island. As the ice continued its retreat a fresh water lake was formed in the embayment between the glacial ice on the Connecticut shore and Long Island. This soon was replaced by sea water, forming what is now Long Island Sound.

Because of this geological history, Long Island Sound is not a typical estuary with a great river at one end, the sea at the other. The Sound is an enclosed arm of the Atlantic Ocean, with several important rivers such as the East Housatonic, Connecticut and Thames Rivers, draining into it. But this is not what makes Long Island Sound of interest today, but rather the fact that this body of water has become an urban sea.

Today the Sound is a playground for some 12 million people. On its shores the citizens of New York and Connecticut bathe (where possible), boat, race, fish, bird watch, dig for clams (where possible), and earn a living through shell fishing and fin fishing. Today the Sound is also used as a dumping ground for 1.8 million tons of dredge tailings, materials from metropolitan excavations, and for waste products of certain industries. Additionally, sixty municipal sewage treatment plants discharge over 170 million gallons of

waste water per day into the Sound, and it receives the waste heat of power plants generating more than 3,000 megawatts.

What makes this urban sea interesting is that from the Metropolitan complex of Queens and Westchester Counties on the western boundaries of the Sound, the scene changes slowly and steadily to the east as urbanization gives way to suburbia and finally to the agricultural areas of eastern Long Island and eastern Connecticut. (Suffolk County, Long Island, is the leading agricultural county in New York State.) Here, at the eastern end of the Sound, the cluttered, industrialized shoreline and the hustle and bustle of harbor, airports and bridges has given way to the open coasts which still have vestiges of their earlier maritime history. Mystic Seaport, Connecticut, with its whaling museum and square riggers, is matched by the quaint village of Sag Harbor, Long Island and its whaling museum and traditions. Old oyster industries, once a multi-million dollar venture in Long Island Sound, still hang on, but only a few companies are still fighting the increased costs of labor, starfish, and pollution. The famous Stonington fishing fleet still operates and the Stonington dragger, though no longer built, is still a familiar sight in this area.

Long Island Sound presents the full spectrum of man's impact on the sea from the urban sea at the western end to the open, relatively unpolluted waters at the eastern end. The eastern end of the Sound is relatively open and has good exchange of water between the Atlantic Ocean and Block Island Sound. At the western end, access to the sea is greatly constricted through the East River, a tortuous channel which, before the boulder fields of Hell's Gate were cleared was considered one of the most difficult passages for sailing ships. The exchange of waters between the New York Harbor and western Long Island Sound is still a subject of debate among hydrologists, but apparently there is a great input to the Sound of nutrient laden waters derived in large part from the sewage treatment plants of Manhattan, Queens and Westchester Counties.

What has happened to Long Island Sound over the years? Nothing dramatic. Just a slow, general, wasting through misuse coupled with a general indifference because the problems were not observable by the public. In the past few years the situation has changed; public awareness of the importance of the Sound has reached high levels and the public concern expressed by civic and conservation groups has not been unheeded. Spurred on by the activities of these groups, Senator Abraham Ribicoff of Connecticut and Congressman Lester Wolff of Long Island sponsored legislation in the Congress to establish a Long Island Sound Commission to study, recommend and manage this body of water. In response to the congressional action, President Richard Nixon, by executive order, increased the responsibility of the New England River Basins Commission to include the waters of Long Island Sound and called for a three-year study to formulate a 20-year plan for its management. As with so many of these actions, the legislative and executive intent has not been backed with funds, and presently the Long Island Sound study is making haste slowly.

The most pressing problem of Long Island Sound, to isolate the one single factor to which to attribute its present decay, is the concentration of sewage outfalls in the western end. The impact of sewage and the resulting biological stimulation from the nutrient materials placed in the waters has caused responsible reporters to project the imminent death of Long Island Sound—the difficulty is to define "death." The immediate observable impact of sewage outfalls is the build-up of what has been termed a "nutrient-wall" at about a third of the length of the Sound from its western ex-

tremity. From the "normal" levels of nitrates and phosphates, the essential chemical building blocks for life, which exist in much of the eastern Sound, there are sharply increasing values from roughly the point of Lloyds Neck westward. In the westernmost portion of the Sound, the concentrations of nitrogen and phosphorus are among the highest in marine waters anywhere in the world.

Each year the tiny plants of the sea, the phytoplankton, the base of the entire food chain of the sea, respond to the lengthening day and the slight warming of the water temperatures by increasing in numbers. This rapid growth of the phytoplankton is termed a bloom, and the growth intensity of the bloom is governed to a large extent by the nutrient materials in the waters. In short, when the phytoplankton bloom begins, the single-celled plants divided, grow and divide again, increasing in numbers until all the nutrients which support their growth are exhausted. The numbers of these plants then fall off sharply to a base level where the "crop" remains at a relatively stationary level until the waters build up a new supply of nutrients. In Long Island Sound these blooms generally occur in February and August. As man has increased the nutrient levels of the Sound through introduction of sewage, the intensity of the blooms has increased with time until they have reached the critical point at which the wildly developing populations of phytoplankton have gone beyond the point of being beneficial to the environment and have become, at their peaks, detrimental.

The problem of extreme phytoplankton blooms, the result of a process called eutrophication, has many dimensions. Upon death of the phytoplankton individuals, many species of which have very short life spans, the organic material of the cells sinks and is oxidized by the dissolved oxygen contained in the waters. Organic material added to the Sound through sewage also utilizes oxygen in the waters, further reducing amount of oxygen available to organisms living at or near the bottom. Depletion of oxygen in the western portion of the Sound has reached levels which are now critical for many months of the year—and new sewage plants being developed by communities on both the Connecticut and Long Island Shores call for additional outfalls. Despite the fact that the sewage will be "highly" treated, the treatment is not sufficient to remove the nutrients from the waters and the situation can be expected to worsen.

Long Island Sound once boasted a commercial fishery of consequences, but today there are very few commercial fishing activities left. Pollution is only one factor in this reduction, for with the increase in human population the Sound has become an important recreational fishery area. Although current fisheries data are sketchy, there are many indications that the problem of the Long Island Sound fisheries may result from the competition between the sports fisherman and the commercial fisherman for the same species of fishes, with the sportsman taking the largest portion of the catch. Though the commercial fishers are highly regulated and much scientific effort has been put into the development of management programs for commercially important species, salt water recreational fishing is largely unregulated and management techniques have not yet been developed comparable to those of the fresh water fisheries. Even though the sports fishermen may be taking the largest portion of the catch, the laws are still oriented towards protecting the sports fishermen rather than the basic fishery itself.

Fishes taken in Long Island Sound are beginning to show distressingly high levels of mercury. Larger specimens of bluefish and striped bass, both highly prized by the sports fisherman, have shown mercury contents as high as 1.2 parts per million. Should these values continue to rise an important recre-

ational asset may be lost. Here, however, the problem is less well defined and may not be assessable against the waters of the Sound. Most of the species of fish taken in the Sound are migratory, ranging from Cape Cod to the Chesapeake Bay. Much research must be devoted to determining where these species acquire the mercury before we will be able to control the problem.

Shell fisheries, once an important industry for Long Island Sound, are hard pressed on many fronts. Oyster spat produced in Connecticut were formerly taken out to beds in Long Island Sound to grow to market size. High quality marketable oysters were produced in large quantities until the mid-1950's when the industry was decimated by an influx of predatory starfish. The cause of the invasion is still unknown and the starfish remain. Their presence alone, but with the situation worsened by pollution, has resulted in the almost complete collapse of the Long Island Sound oyster industry. At the present time efforts are being made to revive the production of oysters through mariculture including the use of heated waste waters from power plants for stimulating more rapid growth of the oyster. These efforts, however, are still very small in scale. Pollution has affected recreational shell fishing in Long Island Sound. At the present time over 75,000 acres of bottom lands have been closed to shellfishing because of contamination by coliform bacteria from human sewage.

The New York Bight region has received a great deal of national publicity because of the dumping of sewage sludge in the coastal ocean. While newspaper reports often include the word "garbage" in describing these dumping practices, in fact no garbage is dumped at sea in the New York region. But Long Island Sound is the unhappy recipient of 1.8 million tons of debris dumped yearly in its nineteen designated dumping grounds. The materials dumped here consist primarily of dredge spoils from harbor management programs. These spoils present a very real hazard to the future of Long Island Sound. Studies conducted at the Marine Sciences Research Center demonstrate that most dredging operation sites are industrialized harbors which receive both treated and untreated sewage and industrial wastes. As a result a thick accumulation of fine grained, highly carbonaceous material has built up on the harbor bottoms. It is this material which is most frequently dredged and carried off to the dumping grounds. The restirring of these fine grained sediments exposes the organic material contained in them to the waters of Long Island Sound, creating yet another drain upon the oxygen of its waters through release of contained nutrients. It may also release various toxic or deleterious chemicals derived from industrial wastes into the waters of the Sound.

Dredging operations are manifold in the waters of Long Island Sound. They range in scope from the maintenance of major channels for commercial shipping to the opening of shallow embayments for recreational boating and the construction of marinas. Over 185,000 pleasure craft are registered in areas surrounding Long Island Sound. Nowhere has this been more important than on the eastern end of Long Island where the number of natural harbors decreases rapidly to the east and the pressures from population growth in the last decade have created long waiting lists for marina space. To meet these demands, local authorities dredged wetlands at increasing rates. Recently the trend has slowed as pressure from conservation groups and the environmental community has led, in certain areas, to the placing of very high priority upon public acquisition of wetlands and their preservation as open space and vital segments of the marine ecosystem. However, the action came sufficiently late so that between 1954 and 1964 over 29 percent of the wetlands of Long Island were lost.

Oil is a perpetual problem. Long Island Sound has not been looked upon as a favorable site for the production of oil, and the nearest producing areas are sufficient distant to not directly endanger its waters. However, the Sound does provide a sheltered corridor for the transport of oil by barges and small tankers. Both sides of the Sound are dotted by tank farms and oil transshipment facilities. In 1970 and 1971 major spills of over 300,000 and 600,000 gallons occurred. The impact of large volumes of oil in marine waters is a part of the dreary litany too well known to environmentalists. However, potentially more serious, and more difficult to assess, is the cumulative effect of the small spills occurring at transshipment points over long periods of time. Though the volumes of each spill may be undramatic, the biological effects may in time be as important as the larger, more conspicuous events which catch the public eye.

The catalogue of woes of Long Island's waters has been scarcely touched. Unwritten here are the effects of pesticides, PCB's, agricultural run-off, changes in fresh-water run-off through increasing utilization of groundwaters on Long Island, the effects of highway expansion upon recreational areas, and the process of urbanization. To end on such an unhappy note is to do Long Island Sound's clamoring public a great disservice. There is a great deal of positive action and, to a large extent, it has been generated by pressures from the public who now clearly see the deteriorating water quality.

Both Connecticut and New York State, through their environmental agencies, are beginning to take tougher positions in the enforcement of existing regulations. Many will reckon that these actions are too little, too late, but the direction is correct. Connecticut has passed a Wetlands Act which provides for greater State control of wetlands areas. Suffolk County, Long Island, is proposing legislation requiring zoning review by the County rather than solely by local municipalities. A Regional Planning Board established by Nassau and Suffolk Counties has made pioneering efforts in attempting to integrate the quality of the marine environment into regional planning. The Board established an advisory group, the Regional Marine Resources Council, which has engaged in a program of research which will lead to a comprehensive management program for the marine region of the two counties. Citizens' groups have emerged as an active and potent force in guiding public opinion and governmental action. Groups such as the Nature Conservancy, the Audubon Society, and more recently the Sierra Club, are continuing long standing efforts to conserve the natural resources of the Sound. Other, newer environmental groups have joined forces, such as the Long Island Environmental Council and the Junior League in New York and Connecticut. The governments of New York and Connecticut have begun discussions leading to the development of a compact providing for better controls for Long Island Sound.

What of the future? It is not wise to attempt to predict the course of events about which so little is known. Surveys of Long Island Sound conducted in the mid-fifties by the Bingham Oceanographic Institute of Yale University, and in the past two years by the Marine Sciences Research Center, State University of New York, provide only two points on a graph of water quality. Projection beyond these points becomes an exercise in anticipation of the wisdom of the people. The accumulation of pollutants in Long Island Sound has probably not reached its maximum and the levels of metals, insecticides and nutrients will continue to increase for as much as ten years.

Will the recuperative forces of Long Island Sound be pushed to the point beyond which environmental quality precipitously declines? The prospects for the urban sea are linked

to the future of the cities. If we save the cities, restoring the quality of their environment and life experiences, we can do the same for the urban sea which provides so much life enhancement for the populace living on its shores.

Dr. Squires is director of the Marine Sciences Research Center and professor of Biological Sciences and of Earth and Space Sciences at the State University of New York, Stony Brook. A Research Associate at the American Museum of Natural History and the Smithsonian Institution he is also an Associate for Natural History Information Resources at the Smithsonian. Dr. Squires is the author of numerous biological, geological, and oceanographic articles.

[From the New York Times, Mar. 22, 1972]
GROUNDED TANKER SPILLS OIL IN L.I. SOUND
(By David A. Andelman)

FISHERS ISLAND, L.I., March 21.—A 2.5-million gallon tanker ran aground and split open early today, spilling more than 60,000 gallons of oil into Long Island Sound.

The spill, the largest in more than three years in Long Island Sound, quickly spread, covering more than 45 square miles. Late this afternoon it began washing ashore in areas of southern Connecticut near Niantic and on Fishers Island, which, though closer to Connecticut, is part of Long Island.

Officials of the Connecticut Department of Environmental Protection said that a number of gulls already had been seen coated with oil, a No. 2 home heating oil.

In the last two months, oil from two other spills, both of unknown origin, has washed up on the beaches of Long Island—one along a 25-mile front of Fire Island National Seashore, the other on the north shore of Suffolk County.

In December, an empty 640-foot tanker split in half and sank at the dock in Port Jefferson harbor and last month another tanker ran aground in the same harbor, but no oil escaped.

Shortly after 3 A.M. today, the F. L. Hayes, a 240-foot coastal tanker owned by Spentebush Inc. of New York City, ran aground on Bartlett Reef, about two miles from the Connecticut shore. Coast Guard officials refused to state the cause of the error that caused the grounding.

The ship, bound from Bayonne, N.J. to the Dahl Oil Company in Norwich, Conn., was carrying 600,000 gallons of No. 2 oil.

Two of its seven tanks ruptured on impact and it was nearly four hours before workers from the New England Pollution Control Company were able to place oil-containment barriers around the ship and stop the flow of oil. An estimated 63,000 gallons of oil had already escaped, Coast Guard officials reported.

At 2:30 P.M. today, after the oil in the tanker had been removed to barges, the ship was refloated using tugboats and was transported to New York City for repairs.

The last spill of comparable magnitude in Long Island Sound also occurred on Bartlett's Reef, in January 1969, when a barge ran aground. That slick extended from Waterford, Conn., to Point Judith, R.I., and resulted in the death of "hundreds of birds."

Shortly after yesterday's incident became known, officials of the Federal Environmental Protection Agency's regional headquarters in Boston flew to the scene.

Due to the size of the spill in navigable waterways, the provisions of the National Oil and Hazardous Pollution Contingency Plan were invoked, giving authority to the Coast Guard to take charge of clean-up operations.

[From the New York Times, Mar. 22, 1972]
JERSEY ASSEMBLY MOVES TO BAN FLOATING A-PLANTS
(By Ronald Sullivan)

TRENTON, March 20.—The State Assembly unanimously approved a legislative resolution

today aimed at blocking the construction of two floating nuclear-power generating plants off New Jersey's southern coast.

Plans for the nuclear plants were made public last Wednesday by the Public Service Electric and Gas Company.

A few hours after the Assembly action, the chairman of the Assembly's Agriculture, Conservation and Natural Resource Committee announced that her committee probably would clear another legislative measure next week creating a state sanctuary extending three miles to sea from Sandy Hook to Cape May. Such a measure would effectively bar the power stations as well as any other intrusion into coastal waters within the state's three-mile jurisdiction.

The sanctuary measure has Assembly Speaker Thomas J. Kean among its sponsors.

The sanctuary would be protected from "any exploitation, development or activity that would seriously alter or otherwise endanger the ecology or the appearance of the ocean, the sea bed or the sub-soil therein."

NEW POLITICAL REALITY

According to the chairman, Assemblyman Josephine Margetts, a Morris County Republican, the approved resolution and the bill in her committee represented a powerful new political reality in New Jersey. Any proposal that poses any threat to the environment, she said, will encounter legislative opposition unheard of here five years ago.

Mrs. Margetts cited last week's emphatic rejection in the Assembly of a proposal by the New Jersey Turnpike Authority to construct a \$322-million expressway extension through the middle of the state.

Today's resolution, which approved by a vote of 65 to 0, called on the Atomic Energy Commission in Washington and the State Department of Environmental Protection to oppose plans for the reactors pending environmental studies.

However, sponsors of the resolution readily conceded that the primary objective was to block the plans entirely.

Public Service announced that it had signed a letter of intent with the Westinghouse Electric Corporation for the construction of two 1.15-million kilowatt nuclear-power generators that would be anchored offshore—either in front of the Long Beach island community of Harvey Cedars, or near Little Egg Harbor inlet.

The generators would cost \$1-billion and Public Service, the state's largest power utility, said it hoped to start construction by 1976 and have them running by 1980.

The new proposals have led to a storm of opposition in southern New Jersey, where state legislators, county officials, and local office-holders plan a rally in opposition at the National Guard Armory in Toms River on Saturday.

ACCIDENTS WILL HAPPEN

Assemblyman Franklin H. Berry Jr. of Ocean County said no one would want to sit, much less swim, at a beach with a nuclear-power generating plant "staring you in the face."

He also stressed the threat to sea life and the fact that "accidents will happen, no matter what the engineers say," and cited the collapse of Air Force radar tower 66 miles off the Monmouth shoreline in 1961.

"Can you imagine a nuclear-power plant running amok in the Atlantic?" he asked.

A spokesman for Public Service said the Assembly resolution was "redundant" because the A.E.C. required lengthy environmental studies as a matter of policy before any approval would be considered.

RURAL DEVELOPMENT BILL REPORTED—"MAGNA CARTA" FOR RURAL AMERICA

Mr. HUMPHREY. Mr. President, yesterday the full Committee on Agricul-

ture and Forestry approved the Rural Development Act of 1972 which I, Senator HERMAN E. TALMADGE, chairman of the committee, and other members of the committee and Senate sponsored. This bill represents the culmination of almost a full year's effort by the Rural Development Subcommittee, of which I am privileged to serve as chairman, and the full Committee on Agriculture and Forestry. It is truly a "Magna Carta" for rural America.

Almost immediately following the formation of the newly established Rural Development Subcommittee last April, I began hearings both here in Washington and in various parts of the country concerning rural development and legislation designed to further the objectives embodied in rural development. The bill reported yesterday by the full committee takes into account much of the findings of those hearings.

Among the first major bills introduced last year as a part of our subcommittee's efforts was S. 2223, sponsored by Senator HERMAN TALMADGE and myself. This bill, which now is almost wholly contained in the bill reported yesterday, will provide for the establishment of a new and expanded system of credit and financial assistance for rural communities and for industrial and job development in rural America. That bill alone was cosponsored by 51 Senators. Other provisions added to this legislation which now comprise the new bill that were reported yesterday also had many sponsors in both the Senate and the House.

When we began our subcommittee work last year, I made it very clear that rural development was a "bipartisan" matter. And I am happy to report, Mr. President, that throughout our work and efforts concerning this legislation, we have maintained strong bipartisan support in the Congress, and in particular, within the committee and the subcommittee.

The bill reported by the full committee yesterday, is one of the most far-reaching and comprehensive pieces of rural development legislation probably ever to be reported by any committee of Congress.

If enacted, and properly funded, this piece of legislation will serve as a new foundation for rebuilding rural America and the thousands of towns and communities that are located within our Nation's countryside. It represents a strong beginning toward renewing both the promise and potential of rural America and in building a better America. And as such, it also will play a vitally important role in helping to achieve our goal of a more balanced national growth and development pattern in the United States.

It will give new hope to millions of young people who want to live and work in our Nation's smaller communities and family farms, young people, who otherwise, will be forced by economics and lack of opportunity to migrate to our Nation's larger cities.

It will provide desperately needed financial assistance, through revenue sharing, to States, nonmetropolitan planning and development districts and to

local governments to help them plan and build new tomorrows.

It will provide needed incentives to industry to establish and expand businesses and jobs throughout the rural regions of our Nation for the millions of unemployed and underemployed people now residing there.

It will provide for the establishment of a research and education program needed to support and guide the future development of our rural communities and countryside, including special efforts to help small farmers, as farmers, in reaching their goals of improved income through better management.

It will broaden our conservation and environmental efforts in rural areas to conserve and better utilize water, land, and other valuable natural resources.

It will establish a badly needed program of financial assistance for small communities to improve their fire protection services.

It will liberalize credit for farm loans, including loans for young people to get started in agriculture.

It will extend all of these rural development programs to our Nation's first citizens; namely, American Indians.

And it will vest primary responsibility for national rural development with the U.S. Department of Agriculture.

Hopefully, Mr. President, when this bill is considered by the Senate it will receive the support and vote of every Member of this distinguished body. Although many of us often think of rural America as merely farms and open country, containing few people, let me call attention to the fact that the rural America we are addressing ourselves to in this new legislation, encompasses close to 70 million Americans or 35 percent of the Nation's total population.

Mr. President, now let me discuss the major provisions of the new rural development bill reported yesterday by the committee.

First. It provides for the establishment of a borrower-owned, nonfarm credit system, similar to the existing farm credit system. The Federal Government would appropriate \$200 million a year for 10 years. It is anticipated that the system would provide a loan fund up to 20 times the size of the capital in the system. Since borrowers would have to purchase stock in the system, the Federal contribution would eventually be paid off, and the system would be owned by its borrowers and participants.

Second. The bill provides authority for unlimited Farmers Home Administration loans for essential community facilities; to finance business; and improve the environment of rural areas. It also provides loans for small business, and expands the number of eligible applicants and loan purposes for community facilities loans.

Third. It liberalizes Farmers Home Administration lending authority for farm loans. It increases from \$35,000 to \$50,000 the limit on operating loan indebtedness for farmers. It increases Farmers Home appraisals on farm real estate by providing for appraisals at market value rather than "normal basis." By chang-

ing the farm operating loan program to an insured loan program, it will provide a larger loan fund for all farmers. There is also a provision for loans for young people to get started in farming or other rural business enterprises.

Fourth. The bill includes a total first-year grant authority of \$730 million. Five hundred million of this is part of a revenue sharing provision of the bill which would be provided to the States for rural development purposes. Unlike the Nixon administration's original special revenue sharing plan for rural community development, the committee bill would not "fold in" any of 11 categorical grant programs, such as the Appalachian Regional Commission or the rural environmental assistance program, or the Cooperative Agricultural Extension Service.

One hundred million of the authorization would go to borrowers to be used as an incentive for business location in rural areas and for community facilities development.

Fifty million dollars is authorized for grants to the land grant universities for the establishment of rural development extension programs, research and training for rural development and for small farmers.

Five million dollars are authorized for a new rural community fire protection program.

Fifth. The proposal greatly extends the purposes for which cost sharing grants can be made by the Soil Conservation Service, providing for 10-year contracts for soil and water conservation practices. It permits grants from other agencies for land acquisition, and authorizes Federal cost sharing for municipal and industrial water supplies. The authorization for this program is \$75 million.

Sixth. It includes a tough antipiracy provision, prohibiting any financial assistance that would result in the transfer of employment or business activity either by an applicant firm or a directly competing firm.

Seventh. The bill reorganizes the Department of Agriculture and gives it prime responsibility for rural development. It would reorganize the Farmers Home Administration into the Farm Development Administration and the Rural Enterprise and Community Development Administration, each under its own Administrator. It provides an Assistant Secretary for Rural Development Credit.

In order to be eligible for loans to grants, individuals and communities must be located outside cities of 50,000 population and their suburbs.

A committee report on the bill is expected in about 10 days.

THE BUSING DEBATE

Mr. GAMBRELL. Mr. President, the busing debate has largely been one of high intensity and low-grade yield. It has been characterized by political posturing and useless and misleading rhetoric.

In the midst of all the chaos and clamor a few voices have sought in temperate tones and with compelling logic

to fasten our attention on some of the fundamental and underlying truths relating to public school desegregation.

One of the most sensitive and knowledgeable commentators on this subject, who has consistently offered light, as opposed to heat, and who has persistently sought solutions rather than acclaim, is the distinguished junior Senator from Virginia (Mr. SPONG). On Monday, he entered in the RECORD his views on the antibusing and equal education proposals made by President Nixon last Friday evening.

Senator SPONG's statement is characteristically thoughtful as well as forceful, articulate, and persuasive. In particular, Senator SPONG's comments on the essentially useless distinction between racial segregation, which is described as "de facto" and that which is described as "de jure" has received attention in an editorial published in the Roanoke Times of March 21, 1972. The Times is one of Virginia's leading daily newspapers. I ask unanimous consent that the editorial be printed in the RECORD at the end of my remarks.

Senator SPONG has well served his country and his constituents in Virginia by urging the end of forced busing to achieve racial balance for integration purposes and the adoption of a uniform national policy on the subject of school desegregation; one which will be uniformly enforced.

If the so-called leadership of this country, in the Capitol and in the White House, ever ceases playing political games with this issue and gets around to resolving it in a way which will receive public acceptance, the contributions of Virginia's Senator SPONG will surely be among the most significant. His diligence and his statesmanship will make it possible for workable solutions to be arrived at.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Roanoke Times, Mar. 21, 1972]

SENATOR SPONG, HAMMER AND TONG

Virginia Sen. William B. Spong Jr. is performing a service by pounding away on every occasion at one of the central mistakes of the times: court doctrine which treats Northern localities one way and Southern localities another way in school desegregation cases. The justification is that Southern states once had segregation by law (de jure) while Northern states had segregation in fact (de facto).

There is abundant historical evidence that Northern states also discriminated in law and in fact before and after Reconstruction; discrimination has been a matter of degree. The harm done by this "separate and unequal" treatment before the courts has kept the Congress from mobilizing its entire intelligence behind ways to cure the unfairnesses of the past, North and South, East and West.

Secure in their de facto segregated strongholds (and oftentimes sending their own children to private schools), Northern Congressmen have been too pious, too full of preaching and too blind to realities. Massive busing, criss-cross busing, two-way busing has wrenched support for public education; it has damaged a hard-won public support for, or at least acquiescence in, the desegregation process. In the South, of course. What dif-

ference did that make to the de facto segregated strongholds in the North?

Times have changed. School desegregation orders, with wild busing plans, have been issued now in Northern cities. Automatic liberal representatives from Northern districts are switching positions so dramatically it would be comical if it were not tragic. They have helped sow the wind, Gov. George Wallace of Alabama is reaping the whirlwind.

If the nation is lucky, and it probably will be, it will survive the next eight months without the reversal of the 1954 and 1955 Supreme Court decisions prophesied too freely. If a new Congress sits down and tries to solve the problem on a uniform, national basis, the solution will be fair and more enduring. For that, Senator Spong would deserve a good deal of the credit. He is hitting at a basic part of the problem.

YOUTH FOR UNDERSTANDING

Mr. HARTKE. Mr. President, I invite the attention of Senator to the fine work being done by the Youth for Understanding exchange student program. This organization earlier this year marked the exchange of its 20,000th student.

The mission of this group is to provide an opportunity for high school students to travel to a foreign country and live with a foreign family as though they were a member of that family. In this way, international understanding is brought to the personal, the family, the school, and the local community level. The young people are carefully selected on the basis of their academic achievement and their involvement in the community.

Many of these outstanding young students from the United States and the exchange countries indicate that the understanding that they gained as the result of this people-to-people exchange has been of vital importance to them, and, in turn, to their communities, in bringing about the understanding that promotes international goodwill. In this space age when the telecommunication has brought the events of the world into our homes, it is more important than ever before that we learn to understand one another and to appreciate and share our differences in culture, language, and attitudes. I know of no better way to accomplish this than by allowing our young people to live the culture of another country while foreign students see our country through our eyes.

Mr. President, I am particularly proud of the participation of students from the State of Indiana. An average of 40 high school youth each year have had an intercultural experience with families in other countries. Six last year had the opportunity to study for a full year in Sweden, Holland, Germany, and Finland, in the language of that country.

We owe a great deal to the 20,000 students who have participated in these exchanges, to the host families with whom they have lived in their exchange programs and to those who are constantly working to arrange the exchanges. Only as these young people become leaders in their own communities and countries will we be able to fully appreciate how much has been accomplished by this excellent group.

MARIHUANA AND THE LAW—NATIONAL COMMISSION REPORT

Mr. JAVITS. Mr. President, the National Commission on Marihuana and Drug Abuse—of which the Senator from Iowa (Mr. HUGHES) and I are members—today made public its long-awaited report and recommendations to the President and the Congress on the subject of marihuana.

The report deals in great detail not only with the medical and health implications of marihuana use, but also with the legal, economic, and social issues.

It covers the nature and scope of use, effects of the drug, the relationship of marihuana use to other social behavior, and the efficacy of existing law.

The Commission held formal and informal hearings developing extensive evidence from all points of view, including those of public officials, community leaders, district attorneys throughout the country, young people, medical, and other professional experts and students.

More than 50 projects were funded, ranging from a study of the effects of marihuana on man to a field survey of enforcement of the marihuana laws in six metropolitan jurisdictions.

Mr. President, I ask unanimous consent that there be included in the RECORD at the conclusion of my remarks a summary of the major findings presented in the report and recommendations of the Commission.

Of singular importance is the recommendation of the Commission that criminal penalties be eliminated for the private possession and use of marihuana. The Commission has taken a forthright and enlightened position which should go far toward deemphasizing marihuana as a confusing and controversial public policy issue. It is a most salutary and significant step.

But, my distinguished colleague, Senator HUGHES, chairman of the Special Senate Subcommittee on Alcoholism and Drug Abuse, and I would carry the decriminalization recommendation further, and have filed a joint statement containing our separate views so indicating.

We differ from the other commissioners in our view that certain activities involving possession and use of marihuana, which are deemed to be necessarily incident to private possession and use, ought also to be decriminalized. It is for this reason that we have taken exception to those parts of the recommendations dealing with the doctrine of contraband, the casual not-for-profit sale and the limited public possession of marihuana.

Mr. President, I ask unanimous consent that the full text of our separate views be printed in the RECORD following the summary of the findings and recommendations of the Commission, and that a list containing the names of the members of the Commission also be printed.

The report is comprehensive and thorough, and will assist materially in clearing the air of much misinformation and emotion which has heretofore prevented the development of rational social policy regarding this drug.

I urge Members of Congress to give their closest attention to this important report and the recommendations of the Commission. Senator HUGHES and I intend to introduce shortly appropriate legislation to accomplish several of the objectives found in the recommendations of the Commission.

We hope that others—in Congress, as well as parents, young people and others throughout the Nation—will take a fresh look at the problem of marihuana in our society with the new perspective provided by the Commission's report.

I commend the distinguished former Governor of Pennsylvania, Raymond P. Shafer, who, as Chairman of the Commission, provided important leadership in the development of the report. I commend also the Vice Chairman, Dr. Dana L. Farnsworth, other members of the Commission and its Executive Director, Michael Lowenreich—Americans of dedication and insight—who devoted much time away from their personal and professional interests to participate so productively in this effort. Lastly, I wish to congratulate the staff of the Commission which worked particularly effectively under great pressure to complete the first year's work of the Commission.

I look forward to the second-year study of the Commission which will deal with the critically important subject of drug abuse in the United States.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF FINDINGS AND RECOMMENDATIONS AND MEMBERSHIP OF THE COMMISSION

WHO USES THE DRUG

At least 24 million Americans 12-years-old and over have used marihuana at least once, and at least 8.3 million are current users.

More than 40% of college and graduate students have tried the drug.

Of those persons who have ever used marihuana, 41% of the adults (18 and older) and 45% of the youth (12-to-17) no longer use it.

The great majority of marihuana users use the drug less than once a week, probably on weekends, or at a party.

Two percent (500,000) of "ever-users" can be classified as heavy users and use the drug more than once a day.

THE EFFECTS OF MARIHUANA

There is no evidence that experimental or intermittent use of marihuana causes physical or psychological harm. The risk lies instead in the heavy, long-term use of the drug, particularly of the most potent preparations.

Marihuana does not lead to physical dependency. No tortuous withdrawal symptoms follow the sudden cessation of chronic, heavy use. Some evidence indicates that heavy, long-term users may develop a psychological dependence on the drug.

The immediate effects of marihuana intoxication on the individual's organs or bodily functions are transient and have little or no permanent effect. However, there is a definite loss of some psychomotor control and a temporary impairment of time and space perceptions.

No brain damage has been documented relating to marihuana use, in contrast with the well-established brain damage of chronic alcoholism.

A careful search of literature and testimony by health officials has not revealed a single human fatality in the United States proven to have resulted solely from use of marihuana.

Tests on monkeys have demonstrated that the dose required for "overdose death" is enormous and for all practical purposes unachievable by humans smoking marihuana.

No reliable evidence exists indicating that marihuana causes genetic defects in man; however, since fetal damage cannot be ruled out, the use of marihuana is not advisable during pregnancy.

The incidence of psychosis from marihuana use is exceedingly rare, and such reactions tend to occur in predisposed individuals.

MARIHUANA AND PUBLIC SAFETY

The evidence indicates that marihuana does not cause violent or aggressive behavior or crime.

Recent research has not proven that marihuana use significantly impairs driving ability; however, reliable research has not yet been conducted and the Commission strongly suspects that the acute effects of marihuana use (such as spatial and time distortion and slowed reflexes) may impair driving. The Commission believes that driving while under the influence of any intoxicant is a serious risk to public safety.

MARIHUANA AND PUBLIC WELFARE

From what is now known about the effects of marihuana, its present level of use in American society does not constitute a major threat to public health; the high-risk group constitutes the 2% of American "ever-users" who use the drug heavily and pose a concern for public health officials.

The Commission emphasizes the need for increased research into long-term psychological effects, especially with regard to effects on motivation.

Although some segments of society fear that marihuana use leads to idleness and "dropping out," little likelihood exists that the introduction of a single element such as marihuana use would significantly change the basic personality of any person; rather, an individual is more likely to drop out when circumstances join to produce pressures which he cannot handle effectively.

MARIHUANA AND OTHER DRUGS

Recognizing that one of the most controversial issues in the study of marihuana is its relationship to other drugs, the Commission explored in depth the hypothesis that marihuana use leads to the use of other drugs.

The overwhelming majority of marihuana users do not progress to other drugs, although statistically marihuana users are more likely to experiment with other drugs than are non-users.

Marihuana use does not dictate whether or which other drugs will be used.

As stated by Governor Shafer, "If any one reason can characterize why people in the United States escalate their drug use and become multidrug users, it is peer pleasure."

ENFORCEMENT OF THE MARIHUANA LAWS

The Commission was directed by Congress to evaluate the existing federal and state laws relating to marihuana. The vast majority of arrests occur at the state level (at least 200,000) as opposed to the federal level (approximately 4,000). In a study of enforcement in six metropolitan jurisdictions in different states, the Commission found:

93% of the arrests in the sample were for possession.

69% of the arrests were preceded by no investigation, occurring in vehicles or on the street.

Arrests were concentrated among the young (88% were 25 or under); typically the arrestee was a white male, in a school or employed in a blue collar job, without a prior record.

Two-thirds of the arrestees were arrested for possession of an ounce of marihuana or less.

Offenders were generally (67%) arrested in groups of two or more persons.

The Commission pointed out that the criminal justice system often responded to this unusual group of "criminals" in a lenient way:

At least 48% of the adult cases and 70% of the juvenile cases were dismissed by the police, the prosecution or the judiciary.

One-third of the arrestees were convicted and sentenced.

Of those convicted of possession, 24% were incarcerated, usually for a year or less.

The Commission concluded that the law enforcement community has adopted a policy of "containment." "Although effort is sometimes expended to seek out private marihuana use," the Report states, "the trend is undoubtedly to invoke the marihuana possession laws only when the behavior (possession) comes out in the open." Governor Shafer added: "The overriding feature of the present marihuana laws is the threat of arrest for indiscretion."

After considering the effects and social impact of marihuana use, the Commission considered four alternative social control policies for the drug: (1) Approval; (2) Elimination; (3) Neutrality; and (4) Discouragement.

The Commission emphasized that society should not approve or encourage the recreational use of any drug. On the other hand, the Commission concluded that elimination of marihuana and its use is unachievable, and the drug's relative potential for harm to individuals and society does not justify a social policy designed to seek out and firmly punish those who use it.

The most difficult question, the Commission explained, was whether society should try to dissuade its members from using marihuana or should defer entirely to individual judgment, remaining neutral. After lengthy consideration of this issue, the Commission chose to recommend to the public and its policy-makers a social control policy seeking to discourage marihuana use, while concentrating primarily on the prevention of heavy and very heavy use.

The Commission's next step was to consider three legal responses as a means of implementing the discouragement policy: (1) total prohibition (2) partial prohibition; and (3) regulation.

The Commission explained that the total prohibition scheme now in effect prohibits all marihuana-related behavior, including possession for personal use. Partial prohibition would prohibit cultivation and distribution of the drug but would not prohibit private consumption or acts related to consumption. The distinct feature of a regulation scheme (legalization) is that distribution of the drug is legal.

The Commission, rejecting both the present system and the regulatory scheme, was of the unanimous opinion that marihuana use is not a sufficiently grave problem to subject its users to criminal procedures, but that legalization was inadvisable for a drug which does alter short-term perception, which has uncertain long-term effects and which may be of transient social interest.

Instead, the Commission recommended a partial prohibition scheme which symbolizes a continuing societal disapproval of use, yet removes the criminal stigma and threat of incarceration for users, and also maximizes the flexibility of future public responses as new information comes to light.

The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially;

Marihuana would be contraband subject to confiscation in public places;

Criminal sanctions would be withdrawn from private use and possession incident to

such use, but, at the state level, fines would be imposed for use in public;

In order to keep use private, possession of more than one ounce in public would be prohibited;

In addition, casual, not-for-profit transfers of small amounts, permitted in private, would be prohibited in public.

(Specific recommendations for federal and state law are attached).

Five of the 13 Commissioners differed in minor respects regarding the recommendations. Commissioners Rogers, Carter and Ware agree with the discouragement policy and the decriminalization aspects of the recommendations but would recommend, in addition, a civil fine for possession of any amount of marihuana and would limit casual transfers only to those instances where there is no remuneration at all. Commissioners Hughes and Javits believe that marihuana should not be contraband, that all not-for-profit sales should be excluded from the criminal sanction, and that the "ounce or less" requirement for possession in public should be removed.

"A most important question," said Governor Shafer in explaining the Commission's position, "and one which is still too early to answer, is whether the use of marihuana is fad or fashion. It is possible that the widespread use of marihuana could well disappear of its own accord."

In the Commission's opinion, the proposed partial prohibition scheme would permit the law enforcement community to concentrate on what it is best able to do, reduce trafficking and supply of the drug. At the same time, the Commission believes that responsibility for discouraging consumption should rest with non-legal institutions, such as family, schools, church, and the medical profession. In anticipation of the Commission's responsibility to present a report on all drugs in 1973, Governor Shafer said:

"From the many surveys and research studies, and from our formal and informal hearings and deliberations, it is evident that the phenomenon of drug abuse in our country poses a very serious threat to our society which will require a massive and sustained effort in drug education and in the revision of our laws to make them uniform, appropriate, effective, and humane. However, such responses are in effect only medications that will help to contain the social illness of drug abuse. The causes of drug abuse must be identified more precisely and must be attended to by the cooperative efforts of all institutions of our society. We will not be able to deal effectively with the problem of drug abuse until we find answers to the larger problem of the diminishing concern among some of our citizens for such matters as long-range personal objectives, self-discipline and the sense of public obligation."

RECOMMENDATIONS*

I. Federal

a. Possession of marihuana for personal use would no longer be an offense, but marihuana possessed in public would remain contraband subject to summary seizure and forfeiture.

*The 13 Commissioners are in basic agreement with the Report and its recommendations. However, several Commissioners diverge with specific recommendations and their opinions are presented in a footnote on pages 151-156. A brief summary of this footnote follows:

Commissioners Rogers and Carter agree with the discouragement policy and the decriminalization aspects of the recommendations, but feel that the contraband concept is not a sufficiently strong expression of societal disapproval of the use of marihuana. They would recommend, in addition, a civil fine for possession of any amount of mari-

b. Casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit would no longer be an offense.

c. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence, nor shall proof of such intoxication constitute a negation of specific intent.

II. State

a. Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies (although we do recommend uniform penalties).

b. Possession in private of marihuana for personal use would no longer be an offense.

c. Distribution in private of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would no longer be an offense.

d. Possession in public of one ounce or under of marihuana would not be an offense, but the marihuana would be contraband subject to summary seizure and forfeiture.

e. Possession in public of more than one ounce of marihuana would be a criminal offense punishable by a fine of \$100.

f. Distribution in public of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would be a criminal offense punishable by a fine of \$100.

g. Public use of marihuana would be a criminal offense punishable by a fine of \$100.

h. Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail, a fine of \$100, or both.

i. Operating a vehicle or dangerous instrument while under the influence of marihuana would be a misdemeanor punishable by up to one year in jail, a fine of up to \$1,000, or both, and suspension of a permit to operate such a vehicle or instrument for up to 180 days.

j. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence nor shall proof of such intoxication constitute a negation of specific intent.

k. A person would be absolutely liable in civil court for any damage to person or property which he caused while under the influence of the drug.

huana in private or in public. This civil fine would not be reflected in a police record.

Commissioner Ware agrees completely with the statements of Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. He advocates some penalty short of criminalizing the users, such as a civil fine or some type of extensive drug education. Further, he is opposed to the use of any drug, including alcohol, for the express purpose of becoming intoxicated.

Commissioners Hughes and Javits, while agreeing with the Commission's recommendation that the private use of marihuana be taken out of the criminal justice system, disagree with three specific recommendations relating to the implementation of the discouragement policy.

First, they would eliminate the contraband provision from the partial prohibition scheme adopted by the Commission. Second, believing the Commission has not set forth a clear standard as to what constitutes the casual not-for-profit sale, they recommend that all not-for-profit sales be excluded from criminal sanction. Third, they feel there is no need to retain criminal sanction on public possession of more than one ounce of marihuana and would permit public possession of "some reasonable amount" for personal use.

ANCILLARY RECOMMENDATIONS

In addition to these legal recommendations for federal and state action, the Commission believes certain other ancillary recommendations should be presented for action.

Legal and Law Enforcement Recommendations

I. Federal

a. Federal law enforcement agencies, especially the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs, should improve their statistical reporting systems so that policies may be planned and resources allocated on the basis of accurate and comprehensive information.

b. The Federal Bureau of Narcotics and Dangerous Drugs should increase its training programs of state and local police with special emphasis on the training in the detection of trafficking cases.

c. Increased border surveillance, a tightening of border procedures, and a realistic eradication program to diminish the supply of drugs coming into the country, coupled with a more effective program for diminishing the domestic production and distribution of marihuana, are required.

II. State

a. All states should adopt the Uniform Controlled Substances Act to achieve uniformity with regard to marihuana and other drug laws, with the exception that the legal response to possession for one's own use be uniformly adopted in accordance with our recommendation in Chapter V of this report.

b. Each state should establish a centralized compulsory reporting and record-keeping authority so that adequate and accurate statistics of arrests, sentences and convictions on a statewide basis are available.

c. Those states requiring physicians to report drug users seeking medical assistance should change such requirements to insure the confidentiality of the drug user's identity, so that persons needing medical help will feel free to seek it.

III. International

If the United States should become a signatory of the proposed Psychotropic Convention, we recommended that cannabis be removed from the existing Single Convention and consideration be given to listing it in the proposed Psychotropic Convention among drugs which have similar effects.

MEDICAL RECOMMENDATIONS

1. Fuller coordination of the marihuana research conducted by governmental and private agencies is needed to reduce the duplication of effort, assure a diversity of new approaches and new objectives, and to provide efficient integration of findings into the available body of knowledge.

2. Research efforts to develop an inexpensive, easy method for detecting and quantifying the presence of marihuana in the blood, breath or urine of a person suspected of being intoxicated should be accelerated.

3. An accelerated program for funding foreign research should be undertaken immediately.

4. Increased support of studies which evaluate the efficacy of marihuana in the treatment of physical impairments and disease is recommended.

5. Community-based treatment facilities should be promoted in caring for problem drug users utilizing existing health centers when possible and appropriate.

6. Public health courses on the social aspects of drug use should be included in the curricula of the schools of the health professions.

OTHER RECOMMENDATIONS

1. The Commission recognizes that several state legislatures have improperly classified marihuana as a narcotic, and recommends that they now redefine marihuana according

to the standards of the recently adopted Uniform Controlled Substances Law.

2. A single federal agency source should disseminate information and materials relating to marihuana and other drugs. The National Clearinghouse for Drug Abuse Information should be charged with this responsibility.

3. The Special Action Office for Drug Abuse Prevention in the White House should be responsible for the coordination, development and content review of all federally-supported drug educational materials and should issue a report as soon as possible, evaluating existing drug education materials.

4. The Commission notes the significant role played by the voluntary sector of the American community in influencing the social, religious and moral attitudes of our nation's citizens and recommends that the voluntary sector be encouraged to take an active role in support of our recommended policy of discouraging the use of marihuana.

SEPARATE VIEWS OF SENATORS JAVITS AND HUGHES

Commissioner Hughes (Senator from Iowa) and Commissioner Javits (Senator from New York) believe that the Commission has taken a major, highly laudable step in recommending that the private use of marihuana be taken out of the criminal justice system. They concur in its threshold judgment that overall social policy regarding this drug should seek to discourage use, while concentrating primarily on the prevention of irresponsible use. They disagree, however, with three specific recommendations relating to the implementation of this discouragement policy.

First, they would eliminate entirely the contraband provision from the partial prohibitory model adopted by the Commission. They want it eliminated first because its legal implications are confusing and the subject of disagreement even among lawyers. Whether or not possession of a given substance is criminal, possession of material designated as contraband makes that possession *unlawful*. Also, marihuana designated as contraband would be subject to government search and seizure, even though the underlying possession is no longer criminal. The provision—which does not apply to marihuana held for personal use within the home—is considered by both Commissioners to be an unnecessary “symbol” of the discouragement policy. It will not foster elimination of the misunderstanding and mistrust which is a hallmark of our current marihuana policy.

Commissioners Hughes and Javits seek to eliminate it also because as a practical matter it serves no useful law enforcement purpose within the overall partial prohibitory model. If marihuana held for personal use within the home is not contraband, why should marihuana held for personal use within one's automobile be contraband? As a matter of fact, the area of operation of the contraband provision is extremely narrow. If one possesses more than one ounce of marihuana in public, it may be seized without regard to the contraband doctrine since such possession is a criminal violation.

Since the contraband provision does not apply to marihuana possession and use in private, the only effective area covered by the contraband provision is the area of possession in public of less than one ounce. The Commission has chosen to remove the stigma of the criminal sanction in this kind of case. To impose instead a contraband provision, which it is argued is in the nature of a civil “in rem” seizure which does not operate against the person, is to cloud the issue and to weaken the force of the basic decriminalization step. A persuasive justification simply has not been made.

Both Commissioners seek to eliminate it also because they believe that the voice of

the Commission should be loud and clear that the preservation of the right of privacy is of paramount importance and cannot be casually jeopardized in the pursuit of some vague public or law enforcement interest which has not been defined and justified with clarity and precision.

The second area of disagreement with the Commission's recommendations concern the casual distribution of marihuana and the not-for-profit sale. As they understand:

(1) The totally donative transfer is not subject to criminal penalty, regardless of where it takes place.

(2) The transfer of small amounts for insignificant remuneration not involving a profit is not subject to criminal penalty, (except if it is accomplished in public, in which case it is subject to criminal sanction), but,

(3) The transfer of “large amounts” for “significant” remuneration not involving a profit is subject to criminal penalty.

In a footnote on page 63 of the Report, the Commission refers to a Report of the Senate Judiciary Committee on the Comprehensive Drug Abuse Prevention and Control Act of 1970. In substance, it implies that within the meaning of the Act transfers of more than one or two marihuana cigarettes in return for 50 cents or one dollar to cover cost are not intended to be covered as casual transfers, but rather are to be treated as unlawful sales.

Commissioners Hughes and Javits feel that the Commission has failed to set forth a clear standard which will adequately inform the public of their obligations under the law. The recommendation and its discussion in the Report are confusing and fail to provide the individual with sufficient guidance to allow him to act without having to dodge in and out of illegality. It also undermines a basic, stated objective of the Commission i.e., to concentrate the weight of the criminal sanction upon significant supply and distribution activities rather than upon casual consumption.

Moreover, proscribing even the most casual not-for-profit transfers when they occur in public is, in their opinion, incorrect. Such transfers are necessarily incident to private possession and use. To hold that they should be subject to criminal sanction is logically inconsistent with the Commission's rationale and recommendation on decriminalization of such private activities.

Instead, both Commissioners recommend that all not-for-profit sales be excluded from the criminal sanction. It is fundamental that there be a clear separation between the serious, commercial, profit-making-seller, or “pusher” as he is known, and the individual who merely splits the cost of a reasonable supply of the drug with his friends or acquaintances.

Thirdly, exception is taken to the retention of the criminal sanction on public possession of more than one ounce.

The individual who buys an ounce and a half would be a criminal when he buys on the corner, when he puts it in his pocket, when he gets in his car and drives home, when he is on his doorstep, but not when he crosses the threshold of his home. Again Commission policy should direct the attention of the law enforcement community to the person who sells the drug for profit, and not to the person who uses the drug privately.

If an individual has more than a few ounces in his possession, and there is probable cause to believe that he intends to sell it for profit, that activity is already covered under the Commission's recommendation that possession with intent to sell is illegal. Therefore, there is no need to further proscribe simple public possession.

All the component parts of the recommended policy of the Commission should be consistent with its objective of non-interference with casual transfers, and possession

and use which is essentially and fundamentally private and personal.

The contraband device, the not-for-profit sale, and public possession of some reasonable amount which should be presumed to be necessarily incident to private use should all be removed from the ambit of legal sanction. To do so would be to strike down “symbols” of a public policy which had never been adequately justified in the first instance. Such steps would in no way jeopardize the firm determination of the Commission that the use of marihuana ought to be discouraged.

COMMISSION MEMBERS

By law, the National Commission on Marihuana and Drug Abuse has 13 members. Nine public members were appointed by the President who also named the Chairman and Vice Chairman (five maximum from one political party).

Of the four congressional members, two were named by the President of the Senate and two by the Speaker of the House (two from each political party).

Raymond P. Shafer, Chairman, former Governor of Pennsylvania, Chairman of the Board and Executive Director, Teleprompter Corporation, New York.

Dana L. Farnsworth, M.D., Vice-Chairman, former Director of Health Services, Harvard University, Cambridge, Massachusetts.

Henry Brill, M.D., Director of Pilgrim State Hospital, West Brentwood, Long Island.

Representative Tim Lee Carter (R-Kentucky).

Mrs. Joan Cooney, President of the Children's Television Workshop and Producer of “Sesame Street,” New York, New York.

Charles O. Galvin, Dean of Southern Methodist University, Law School, Dallas, Texas.

John A. Howard, Ph.D., President of Rockford College, Rockford, Ill. and President of the American Association of Independent College and University Presidents.

Senator Harold E. Hughes (D-Iowa).

Senator Jacob K. Javits (R-New York).

Representative Paul G. Rogers (D-Florida).

Maurice H. Seevers, M.D., Professor and former Chairman of the Department of Pharmacology, University of Michigan, Ann Arbor.

J. Thomas Ungerleider, M.D., Assistant Professor of Psychiatry, U.C.L.A. Neuropsychiatric Institute, Los Angeles.

Mitchell Ware, Attorney, Mazza, Mazza and Ware, Chicago, former Superintendent of the Illinois Bureau of Investigation, Chicago.

NATIONAL OR STATE PRESIDENTIAL PRIMARIES?

Mr. HRUSKA. Mr. President, the distinguished Senators from Montana (Mr. MANSFIELD) and Vermont (Mr. ARKEN) recently proposed that State presidential primaries be eliminated in favor of one national primary.

Their reasoning as always was logical and persuasive. The financial drain, the physical drain, and the circus aspects of a long series of State primaries are valid arguments for a change in the system.

There are also many good arguments, however, for a continuation of State primaries. If we look at the primaries in a broad perspective, it is possible to see virtues peeping through the curtain of disadvantages.

In an editorial entitled “A National Presidential Primary?” published on March 19, 1972, the Omaha World-Herald has taken such a look at the situation in its editorial columns. It has weighed the arguments for and against

State primaries succinctly but carefully. In my opinion it has done a commendable job of stating a persuasive case for their continuation.

In essence, the World-Herald concedes the wasteful and sometimes silly aspects of State primaries. But it goes on to point out that in the broader view the primaries do furnish a proving ground for presidential candidates which may well be a vital contribution to the complex process of selecting the right man to lead the Nation.

This thought-provoking and reasoned analysis of the question is worthy of study and I commend it to my colleagues. I ask unanimous consent, Mr. President, that the text of the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A NATIONAL PRESIDENTIAL PRIMARY?

Should we scrap state presidential preferential primaries?

Sens. Mansfield and Aiken say they think we should. The Senate majority leader and the Republican veteran would amend the Constitution to provide for a national primary.

The system of state preferential elections is a political circus, they say. It is unfair to candidates and to the voters.

A presidential primary is a political circus. No doubt of that. So is a national political convention, or any rousing political rally, especially when some political prize is in contention.

Moreover, the primaries are wearing upon the candidates. They cost a lot of money. Sometimes the tired candidates say foolish things. (Sometimes they say foolish things when they're rested, too.)

If anybody wants to take another punch at our friends of the electronic media, it might be said that the eye of a network camera focusing on a candidate touring the boondocks can make him and that particular boondock seem a lot more important than they probably are to the process of picking a candidate.

Yet when all is said and done, we think that more is to be said for the state primaries than against them, and that not much is to be said for a national primary.

Columnist Max Lerner observed the other day that for all their barbarities the primaries are not useless. They test the candidate by making him go through a punishing physical and political ordeal. If he can't survive these preliminary tests, how is he going to act when he has to make great decisions dealing with crises that may mean peace or war?

A man should be stretched and tempered in the primaries. If he buckles under such stresses, then he's not the man to be president.

The New Hampshire and Florida primaries have been enlightening, not only because they have reshuffled the relative positions of the candidates but because they have helped to establish what is surely a major issue of this campaign.

McGovern and Muskie appear in different perspective than they did before the two primaries. Gov. Wallace's standing has changed. Humphrey and Jackson look a little better than they did. And Florida voters demonstrated the importance of the busing issue.

Would the national interest have been served if Sen. Muskie had gone unchallenged as his party's front-runner until a national primary in August? We think not. The state primaries provide a series of useful tests for

which a single primary would not be a suitable replacement.

AUTHOR OF NEWS TWISTERS TESTIFIES

Mr. HRUSKA. Mr. President, the Senate Judiciary Subcommittee on Constitutional Rights, on which I am privileged to be ranking minority member, has been holding hearings on freedom of the press for several months. Under the chairmanship of the distinguished Senator from North Carolina, the subcommittee has been developing what I believe will prove to be a most useful and educational body of information on this subject.

On February 2 the subcommittee heard testimony from Miss Edith Efron, a writer for "TV Guide," whose recent book, "The News Twisters," has caused a considerable reaction both within and outside of the major television networks. During her appearance Miss Efron outlined the methodology she employed in studying television news coverage of the 1968 presidential campaign, and discussed her rather striking results. Among other things, she was led to conclude that a simple word-count revealed a substantial bias against Richard Nixon. According to Miss Efron's pro-and-con word computation, the following totals were reached: 16 to 1 against Nixon on CBS; 10 to 1 against Nixon on NBC; 8 to 1 against Nixon on ABC.

Mr. President, I believe all Senators will find Miss Efron's testimony both startling and fascinating. I therefore ask unanimous consent that her prepared statement be printed in its entirety in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

TESTIMONY OF EDITH EFRON, PRESENTED BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, FEBRUARY 2, 1972

Senator Ervin, Members of the Committee: A view has crystallized in this country that the bias controversy is a relatively new phenomenon, spawned by a repressive Nixon Administration, and bred in the dark shadows of right-wing conspiracies.

This view is a symptom of our anti-historical age, where memories are increasingly confined to the parameters of the daily press.

The bias controversy was actually born in the 30's with the collectivist concept of public ownership of the airwaves. Until that time, if people did not like the bias of a publication or a news service, they solved the problem by refusing, individually, to buy it—a simple and rational system that still prevails in all media have broadcast news. It is when they were informed by the United States Government that they collectively "owned" the airwaves, and were quasi-proprietors of the broadcast press, that they began to haggle collectively over the political orientation of that press.

The Government took its first drastic action to control bias in 1941, when the FCC, with its Mayflower Decision, deprived all American broadcasters of their First Amendment rights by forbidding them to express their own views on controversial issues. This solved the bias problem satisfactorily: there were no longer any controversial views on the air to get excited about. Unfortunately, the solution was more deadly than the problem: it constituted a frontal lobotomy of the en-

tire broadcast medium. America had to endure eight years of government-induced vacancy in a major communications system—and the marks of the lobotomy have never disappeared—before the error was acknowledged and corrected.

The correction did not take the form of restoring unbreached First Amendment rights to the individual broadcaster; he remained a second-class citizen. It took the form, in 1949, of the Fairness Doctrine—which allowed the broadcaster to express his own opinions on major controversies, provided that he gave "equal," "equally forceful" and "non-partisan" coverage to other points of view as well.

And from 1949 to this present day, there has been constant dissension in this country over the problem of fairness in broadcast news. It has been most acute with respect to network news which, by virtue of government permission and protection, has acquired a monopoly over the nationwide dissemination of the facts and interpretations of American political life.

As a staff writer on TV Guide, I have been covering this constantly simmering antagonism to the political attitudes in network news for ten years. It was a serious problem in 1960. By 1964, under the Kennedy Administration, the anger had become so intense that it inspired a Congressional investigation. And by 1968, under the Johnson Administration, this anger exploded like a bombshell—with nationwide protests being registered over network coverage of the race riots, the Republican convention, the Democratic convention, the anti-war riots in Chicago. The number of Americans by then who felt that network news was biased ranged between 57 and 70 percent, according to polls of the period.

Throughout this remarkable decade of mounting protest, network management has militantly refused to grant that there is the slightest basis in reality for these public reactions. It has attributed them to a variety of neurotic responses ranging from selective perception, through escapist intolerance of bad news, to a hostile desire to kill the messenger who brought the bad news. Apart from this parlor psychoanalysis of the majority of the population, the networks have had nothing to say save to attest with regularity to their own impeccably objective perceptions.

It was in 1968, at the height of the nationwide protests against network bias that I undertook to do a study of my own—a study of how the networks covered the critical two-thirds of the Presidential campaign of 1968, the last seven weeks until Election Day. I was given a small grant to cover taping, typing and research expenses by the New York Historical Research Foundation, and I set to work.

Time does not permit an extensive presentation of my theory and method, but I will mention three points:

First, I concentrated on prime-time news alone, because all studies indicate that these early-evening news programs are the most important source of political information for the majority of the country.

Secondly, I used an intrinsically journalistic observation as my key test for bias. There is one slanting device known to every editor and reporter in the land. It is this: if a reporter wishes to load coverage of a controversy in favor of a certain position—he will simply stuff his coverage with opinions from those who take the desired position, while giving little or no room to the other side. There are other far more subtle editorial slanting techniques—in *The News Twisters*, I name and illustrate 33 of them—but this is the central one on which my entire analysis is based: I did a systematic check on the equity of pro and con opinion on a group of controversial subjects. This test simultaneously served to check on the

network's adherence to the Fairness Doctrine.

Third and last: I selected the major controversial subjects of the period: The Presidential Race, the War, Black Militancy, Left-Wing protest movements, and several sub-aspects of these broad subjects. In classifying opinion on these matters as pro and con, my basic rule was always to conform to the reporters' own classifications where they existed. If, for example, a reporter described an opinion as "heckling" or "opposition" or as "booming", I classified it as antagonistic opinion; if he described it as "endorsement" or "support" or as "cheering", I classified it as favorable or pro-opinion. The great bulk of opinion in the study turned out to be of this variety which already came pre-categorized in one way or another by the reporter. The opinion which I classified independently was usually covert or implicit opinion by reporters.

This, in essence, was my method. I applied it systematically to seven weeks of network coverage—300,000 words. And the results appeared in *The News Twisters*. I will not report on all my findings here. Instead, I will give you a close-up view of the results of my investigations into two of the most important controversies of the 1968 period—The Nixon-Humphrey race and the War.

The results on Mr. Nixon alone have caused the greatest consternation. Speaking quantitatively, in terms of simple word-count, the pro and con opinion on the Republican Candidate for the Presidency ran as follows:

- 16 to 1 against Nixon on CBS
- 10 to 1 against Nixon on NBC
- 8.5 to 1 against Nixon on ABC.

The anti-Nixon opinion is so voluminous in contrast to the pro-Nixon opinion that it verges on the ludicrous. The content of most of this criticism itself cannot be challenged. Most of the attacks on Nixon were journalistically legitimate. They came from Democratic Party and Independent Party challengers, from assorted Democratic Party politicians, from Democratic union chiefs, and, as such, were a valid part of the campaign.

What was bizarre was primarily the quantity and repetitiousness of the criticism, often in purely optional matters. To illustrate: on CBS, Nixon was charged with telling untruths seven times by political opponents—twice by Hubert Humphrey, twice by Wallace, once by Ramsey Clark, once by Clark Clifford, and once by Lawrence O'Brien. But NBC and ABC deemed such charges newsworthy only three times each. Thus, CBS viewers heard politicians charge Nixon with dishonesty more often than did the viewers on the other two networks put together. All one can conclude is that CBS particularly liked to air this charge.

Similarly, the degree of hostile editorialization about Nixon, his personality, his morality, his campaign techniques, and so on, was quite voluminous. ABC viewers were privileged to hear Nixon described as a man who went for his enemies' "jugular" and who would like to assault them with a "meat-axe".

Startling as was the vast body of anti-Nixon opinion, even more startling were the pro-Nixon findings. In their way, these are the most deadly.

Here, for example, is a summary of all pro-Nixon opinion, from the public and from Republican political figures, carried by CBS TV News during the seven weeks of the campaign period studied: on only six days during the entire seven-week period did CBS news stories include opinion favorable to Nixon from members of the public.

On only one day during the seven week period—on October 28th, towards the very end of the campaign—did CBS news stories include any Republican political opinion which praised Richard Nixon. It came specifically, from Dwight and Mamie Eisen-

hower, and from Nixon assistants Patrick Buchanan and Raymond Price.

The picture is even bleaker for Nixon on ABC-TV. ABC news stories also reported only 6 times in seven weeks on opinions favoring Nixon from the public. And as for Republican political figures: once, on October 8th, ABC News informed its viewers that Senator Javits supported Nixon. Unless one wants to count Bud Wilkinson as a Republican political figure—there was no more.

Of the three networks, NBC was most generous. NBC viewers actually heard opinions favorable to Nixon from the public 12 times in seven weeks. And NBC cited four Republican politicians, on four different days as having favorable attitudes to Nixon. They were: Senator Dirksen, Representative Gerald Ford, Vice Presidential Candidate Spiro Agnew, and State Senator David Stanley.

Given facts like these, one need hardly look at the anti-Nixon opinion at all to know that this was politically biased coverage. The opinions of American citizens who supported Nixon, and the opinions of the Republican Party representatives who were working to elect him President, were simply not on the air.

By contrast, the coverage of Humphrey was fair. Most network newsmen were not enamored of Humphrey—at least not until he had come out for a unilateral bombing halt and won the support of the anti-war groups; but by the end of the campaign period, pro and anti-Humphrey opinion was fairly equitable on all three networks—with ABC and CBS being a touch more friendly, and NBC a touch less. In general, the early sources of political antagonism to Humphrey were thoroughly explored by the reporters; and the later sources of support were given a full airing.

My statistical findings on the Presidential race have aroused something of an uproar in the country. And inevitably, a great many people are frantically denying their reality and are charging me with writing fiction, most particularly in the area of the Nixon findings. You will be interested, therefore, in the comments made in the Winter Issue of *The Public Interest* by Professor Paul H. Weaver of the Harvard University Department of Government. He writes as follows:

"... there are three points to be made about this problem. First, my own inspection of two different samples of Miss Efron's file of anti-Nixon opinion convinces me that, by any reasonable standard, the large majority of such items are in fact quite clearly anti-Nixon opinion; no more than 20 or 30 percent of the anti-Nixon items might be questioned. Nobody has shown that the proportion of questionable items is larger; indeed, so far critics have merely adduced a few extreme examples, as if these were enough to invalidate the entire study. And this brings me to the second point. What is significant about Miss Efron's findings is not the absolute numbers of words pro and con; it is the relative size of the two bodies of opinion. In order to invalidate the finding of a huge disparity between pro-Nixon and anti-Nixon opinion, it is not enough to show that some anti-Nixon opinion has been incorrectly classified—one must show that most of it has been incorrectly classified. Even if one were to find that she had overestimated the amount of anti-Nixon opinion by 100 percent and underestimated the amount of pro-Nixon opinion by 50 percent, there would still be 2.5 times more anti-Nixon opinion than pro-Nixon opinion, a clearly "unfair" pattern. Needless to say, nobody has yet established errors of this magnitude, and it seems unlikely that anyone will."

You will also be interested in a statement issued to the press on October 27th of last year by Dr. George Weinberg. Dr. Weinberg is a psychologist, a research consultant, a

statistician, and author of one of the leading statistics texts in use in American colleges and universities for the past decade. Dr. Weinberg said:

"I saw Miss Efron's research before reading her book and before knowing her conclusions. I found that my judgments coincided with hers well over 90% of the time. The great majority of the statements she classifies as pro or con opinion could hardly be classified otherwise. Miss Efron is far more objective, systematic and explicit in her method than anyone known to me who has ever written a book about TV. After examining her data, I believe that any systematic tabulation by any method would result in essentially the same findings."

In brief, I have not been writing fiction.

Given these findings on Nixon the question inevitably comes up: Was this bias deliberate? The answer to this question is complex and I cannot do justice to it in a few words. But briefly my own answer is this. It was not deliberate in the sense of an organized plot or of a conscious cabale. But it was inevitable given the virtually all-liberal composition of network staffs.

During the campaign, Eric Sevareid acknowledged on the air that most newsmen were for Hubert Humphrey—leaving to implication the fact that most were against Richard Nixon. On February 8, 1970 Howard K. Smith brought this implication out into the open. He generally confirmed Vice President Agnew's charges and said this about the newsmen's prejudices: "Johnson was politically assassinated and some are trying to assassinate Nixon politically. They hate Richard Nixon irrationally."

I believe that my findings are evidence of such antagonism, that it was so deep and widespread that it contaminated professional decisions—and that network managements must be held responsible for the result.

Now, to examine another subject, briefly—the War.

In *The News Twisters*, opinion on the Vietnam War is classified under different headings, just as it appeared in network news stories. There is: opinion on the U.S. War Policy in general; and opinion on the U.S. Bombing Halt policy in particular.

And once again, we see precisely the same pattern of heavy loading of opinion on one side—and a virtual void of opinion on the other.

In the seven weeks studied, the three networks carried 72 different stories in which opinion was heard condemning the U.S. Policy on the war, and demanding a unilateral bombing halt in opposition to the Johnson policy of reciprocity. Seventy-two stories means that about 10 times every week, the networks were pounding America—and the Johnson Administration—with opinion opposed to government policies on the war. This editorially selected outcry, subtly interlaced with editorial opinion, came from the following sources:

Senators Fulbright, Javits, Morse, and McGovern; Paul O'Dwyer, John Gilligan; Eldridge Cleaver, Dick Gregory, The President of Yale, SDS Leader Tom Hayden, Actress Vanessa Redgrave; The Socialist Workers' Party, The Peace and Freedom Party, The Freedom and Peace Party, The Socialist Labor Party, The Communist Party; Arthur Goldberg, George Ball, Averill Harriman, Cyrus Vance; U Thant; Indira Gandhi; Xuan Thuy, the North Vietnamese Negotiator; Soviet Premier Kosygin; British and Tokyo demonstrators—and assorted domestic students, demonstrators, Black militants, soldiers, pacifists, artists and so on.

Many of these sources were frequently repeated in successive newscasts. It is quite clear that the networks concentrated on the views of an assortment of Doves and Leftists, foreign and domestic, who were opposed to U.S. war policies.

And what did we hear on the other side? I'll summarize it for you precisely. It was to be found in only 13 stories—13 as opposed to 72, meaning: a 6 to 1 ratio against the Government:

ABC aired only four opinions opposed to a unilateral bombing halt in 7 weeks—three from President Johnson, alone or in combination with Walt Rostow and Dean Rusk; and one from President Thieu of South Vietnam.

CBS aired only two such opinions—one from Ohio Republican William Saxbe, and a paraphrased opinion citing "the generals in Vietnam and the Secretary of State".

And NBC also presented two opinions—one from President Thieu, and one from Iowa State Senator David Stanley.

That is: 8 opinions in 7 weeks opposing a unilateral bombing halt, on all 3 networks combined.

On the subject of the general war policy: ABC aired four favorable opinions—those of President Johnson and or Ambassador James Wiggins—twice each.

CBS aired only one such opinion—from President Johnson.

And NBC aired none.

That is: 5 opinions in 7 weeks favoring the Johnson policies, on all 3 networks combined.

This is remarkable coverage indeed of the biggest controversy in the nation. It totally failed to reflect the attitudes in the nation, which at the time was giving President Johnson majority support. The Administration's allies, both domestic and foreign, were simply not on the air.

On February 27, 1968, Walter Cronkite presented a special report from Vietnam. In it he said: "It seems now more certain than ever that the bloody experience of Vietnam is to end in a stalemate", and he predicted that the United States would not be victorious in this war. And on March 10, 1968, Frank McGee presented a Sunday Report in which he said that "the enemy now has the initiative" and that "the war as the Administration has defined it is being lost". The New York Times headlines read on March 12: "U.S. is losing war in Vietnam, NBC declares".

Apparently having decided that the war was being lost, these two networks, and ABC as well, resolved to give little or no air time to any view which supported President Johnson's policies.

Whatever one may think about the war, this is not balanced reporting of diverse opinions on a crucial controversy. It is disguised, political advocacy.

Very much the same situation prevails in the other controversial areas which I investigated. Over and over again on all 3 networks—whether the subject was Black Militants, or the White Middle Class, or the Left, or the Right—this lopsided opinion can be found. It favored Black power, it opposed the White Middle Class; it favored the left, it opposed the Right. Almost always the opinion was loaded on the left-liberal side of the controversies. Almost always there was a vacuum, or a dramatic shortage, where strong opposition views could and should have been present.

Because of this acute shortage of opinion on one side of almost every controversy, one can state with extraordinary precision which groups in this country were deprived of representation on network news programs during the 1968 period of study. These groups were:

The broad white middle class majority, Republican and Democrat
Conservative and Republican leaders
The broad black majority
Moderate black civil rights leaders
And the ideological pro-violence New Left.
And these happen to be the very groups which in 1968 and 1969 charges the network repeatedly with bias. They, in fact, are ex-

actly what remains when you subtract the left-liberals from the American political spectrum. It is no great surprise that when Vice President Agnew delivered his speech on network bias a year after the period of this study, there was a volcanic eruption in the nation—with some 57 percent of the public, including 60 percent of all college graduates, supporting him. This public explosion appears to have been a direct and cumulative response to the opinion loading, to the one-sided advocacy that passed for balanced reporting on controversies.

The Americans who protested are obviously the Americans whose views were chronically left out.

Omission—the crudest slanting technique in the journalistic repertoire—is the principal technique in network slanting. It is perhaps inevitable therefore that when CBS chose to attack The News Twisters, its attack was a monument to this very slanting technique.

In September, before The News Twisters was published, a 10 page document was distributed to the nation's media by CBS. The mailing literally blanketed the country. It is a study of The News Twisters conducted by The CBS News Department itself. It claimed to present hard, documentary evidence of the degree to which I had grossly distorted CBS transcripts. This evidence, said CBS, was based on a "spot check" of those transcripts.

This document is a fraud. Its fraudulence consists in a systematic omission of every conceivable piece of information either from CBS transcripts or from The News Twisters' text which would make my classifications intelligible and would reveal the reasoning behind them. The effect of these omissions was to make my work seem arbitrary, irrational and dishonest.

Seventeen charges were listed by CBS—a number that is statistically insignificant for my study; although CBS did not mention this fact to its readers—and of these 17 charges, 15 contained active misrepresentations of either CBS transcripts of The News Twisters' text or both. I have prepared a detailed report in which I identify every misrepresentation; restore every violated context; present the stories that CBS sought to conceal; and I have identified the precise principles by which CBS conducted its so called random "spot check". My analysis reveals that it was not a "spot check" at all but a carefully calculated smear planned to discredit my book before publication. I call this report "How CBS Tried To Kill A Book". I cannot cite from it, textual analyses must be read. I hope that every member of the Committee will read it and I request that it be published in the record of these hearings. I believe that this report will assist the Committee in its examination of the conflicts that have arisen nationally over network news.

Now I respectfully submit that the very existence of an ideological oligopoly that controls the airwaves—let alone one which acts to destroy both criticism and critics—is an immense danger to this country. A considerable awareness already exists in Congress of this danger and some substantial proportion of Congressmen are as angered by the bias as are members of the public. But Congress is nonetheless afflicted by a characteristic paralysis when it comes to action in this area. Even an explosion of nationwide protest—a protest that included 3 out of every 5 college graduates according to the Harris and Gallup polls—could not move Congress into action.

It is quite apparent why the Congress—and the FCC—are paralyzed. This misadventure of Congressman Staggers reveals the bitter truth: that their hands are permanently tied; that they cannot act against this monolithic bias on the nation airwaves; that the Fairness Doctrine is an impotent

ideal which cannot be enforced without violation of the First Amendment; that the First Amendment does not deny the right of a news service to be biased, it only states that the news service is free; that even the Supreme Court cannot talk the discrepancy between the Fairness Doctrine and the First Amendment out of existence; and that the nation in fact has no protection whatever from this ideological oligopoly.

The day must come when Congress acknowledges this truth—and more: when it acknowledges that it alone has created this situation, that it is by Congressional permission alone that this oligopoly exists and has so long been sheltered from any challenge to its power. On that day, Congress will recognize that this artificial tyranny must be destroyed—by the Congress which brought it into being.

There is only one way to destroy it without violating the First Amendment. That way is not by the petty chivvying and nibbling and the proliferation of regulations that has gone on for years. It is for the government to acknowledge the sacred status of the First Amendment in this country; to acknowledge that it has no business regulating an intellectual and artistic medium—that it never had any business doing so—that it never should have violated the First Amendment rights of individual broadcasters and allowed 3 nationwide monopolies to form on this intellectually stagnant base—and that it should not year after year, have blocked economic and technological competition in this area to protect the profits of these 3 giant monopolies.

The government must acknowledge all this however painful it may be. It must get out of broadcasting lock, stock and barrel and let CATV, Pay TV, and cassette technology rip, uncontrolled, unlicensed, unregulated, uncensored, and uninhibited—dominated exclusively by the desire to win voluntary customers, and regulated by the law of supply and demand alone. Only this hurricane of fresh air will bring about in broadcasting the intellectual freedom and diversity that is now lacking.

What is desperately needed in broadcasting is the classical American system that prevails in all the other free media in this land—a free enterprise, pay system, in which each producer of intellectual and artistic commodities is absolutely sheltered by the First Amendment; in which each individual consumer purchases only the products that please him and leaves those who have tastes and views alien to his strictly alone. It is this competitive system—free of the twin plagues of government intervention and nationwide monopolistic concentrations of power—which alone have given us the huge spectrum of intellectual and artistic alternatives in this country. It is this proved and honorable system which must be introduced into broadcasting.

Only one thing is needed to accomplish this and that is for government to withdraw from this media. Poetry does not need the government; plays do not need the government; movies do not need the government; documentaries, newspapers, magazines, novels, photographs and sports events do not need the government. All this country has gotten from government intervention into this realm is the stupidest, most restricted, and most venal medium of communications in the country.

There may be chaos for a while if the government gets out. This chaos would be temporary and supportable. And when it settles, and when the long pent up creative and competitive energies flow into this government-created vacuum—health will be restored to this medium.

In the process, those arrogant parasitical growths known as the networks will shrink down to the size of normal syndicated operations—selling their wares in an open mar-

ket and feeling the bite of direct competition for the consumer dollar. This is, of course, precisely as it should be.

The irrational power of the networks today is purely a function of the freedom which has so long been denied to others. It is the government which must take that power back.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

EQUAL RIGHTS FOR MEN AND WOMEN

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Chair lays before the Senate the unfinished business, which will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The ACTING PRESIDENT pro tempore. The pending amendment is amendment No. 1068, offered by the Senator from North Carolina (Mr. ERVIN). Time is limited to 2 hours, equally divided between the proponent of the amendment and the manager of the bill. Who yields time?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against either side.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, the pending amendment reads as follows:

At the end of section 1 add the following sentence: "This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to women."

I am constrained to offer this amendment because I remember how faithfully my own mother performed the obligations devolving upon her as a wife and mother. I am also constrained to offer this amendment because of my realization that my life has been made happy by a wife who has stood beside me for many years and has faithfully performed all of the obligations devolving upon her as a wife and mother.

My own mother and my own wife have given me the capacity to comprehend what Rudyard Kipling said in his poem entitled "Mother o' Mine" from "The Light That Failed."

If I could, I would compel every Member of the Senate to read the poem before he votes on this amendment. If every Member of the Senate would read it before he casts his vote, I am confident that

he would have great difficulty in voting to rob wives and mothers and widows of the protections which commonsense and reality and the experience of the human race have placed around them, to enable them to perform their roles as wives and mothers, to give necessary nurture and training to their children, and to impart to their children the training which is absolutely indispensable to their intellectual and spiritual development.

The poem reads:

If I were hanged on the highest hill,
Mother o' mine, O mother o' mine!
I know whose love would follow me still,
Mother o' mine, O mother o' mine!
If I were drowned in the deepest sea,
Mother o' mine, O mother o' mine!
I know whose tears would come down to me,
Mother o' mine, O mother o' mine!
If I were damned o' body and soul,
I know whose prayers would make me whole,
Mother o' mine, O mother o' mine!

Mr. President, in appraising the objectives of the militants, we are confronted by the question whether there is any rational basis for reasonable distinctions between men and women in any of the relationships or undertakings of life.

We find in chapter 1, verse 27, of the Book of Genesis this statement which all of us know to be true:

God created man in His own image. In the image of God, created He him. Male and female, created He them.

For this reason I share completely the recent observation of a legal scholar, Mr. Bernard Schwartz of the New York University Law School:

Use of the law, in an attempt to conjure away all the differences which do exist between the sexes, is both an insult to the law itself and a complete disregard of fact."

While I believe that any laws making unfair or unreasonable distinctions against women should be repealed by legislative bodies, or judicially annulled by courts under the provisions of the 14th and 15th amendments, I have an abiding conviction that the law should make such distinctions between men and women as are fairly or reasonably necessary for the protection of women and the existence and development of the race.

When He created them, God made physiological and functional differences between men and women. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. Some wise people even profess the belief that there may be psychological differences between men and women. To justify their belief, they assert that women possess an intuitive power to distinguish between wisdom and folly, good and evil.

To say these things is to imply that either sex is superior to the other. It is simply to state the all-important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The physiological and functional differences between men and women empower men to beget and women to bear children, who enter life in a state of utter helplessness and ignorance, and who must receive nurture, care, and training at the hands of adults through-

out their early years if they and the race are to survive, and if they are to grow mentally and spiritually. From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care, and training to their children during their early years.

In this respect, custom and law reflect the wisdom embodied in the ancient Yiddish proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist.

For this reason, any country which ignores these differences when it fashions its institutions and makes its laws, is woefully lacking in rationality.

The common law and statutory law of the various States recognize the reality that many women are homemakers and mothers, and by reason of the duties imposed upon them in these capacities, are largely precluded from pursuing gainful occupations or making any provision for their financial security during their declining years. To enable women to do these things and thereby make the existence and development of the race possible, these State laws impose upon husbands the primary responsibility to provide homes and livelihoods for their wives and children, and make them criminally responsible to society and civilly responsible to their wives if they fail to perform this primary responsibility. Moreover, these State laws secure to wives dower and other rights in the property left by their husbands in the event their husbands predecease them in order that they may have some means of support in their declining years.

If the equal rights amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, it would nullify all existing and all future laws of this kind.

The purpose of my amendment is to prevent the equal rights amendment from nullifying all existing laws and disabling Congress and the 50 State legislatures to enact future laws which grant protections to wives and mothers and widows.

As appears from pages 936 to 954 of the Yale Law Journal, the equal rights amendment is expressly designed to nullify the State laws which give these economic and social protections to wives, mothers, and widows and to provide in their stead that the rights and responsibilities of men and women in the areas covered by these laws shall be absolutely coequal. To sustain the assertion which I have just made, I wish to read what the Yale Law Journal says on this subject:

Given the traditional social and economic view that woman's place was in the home, it is not surprising that laws affecting domestic relations have defined women's rights and duties with great specificity.

At common law, a woman who married became a legal non-person—a *femme couverte*. Upon marriage, she lost virtually all legal

status as an individual human being and was regarded by the law almost entirely in terms of her relationship with her husband. Statutory developments in the nineteenth and early twentieth centuries tended to frame a more dignified but nevertheless distinct and circumscribed legal status for married women. At the present time domestic relations law is based on a network of legal disabilities for women, supposedly compensated by a corresponding network of legal protections. The law in this area treats women, by turns, as mental incompetents and as more mature persons than men of the same age; as valuable domestic servants of their husbands and as economic incompetents; as needing protection from their husbands' economic selfishness and as needing no protection from their husbands' physical abusiveness. In many respects, such as name and domicile, the law continues overtly to subordinate a woman's identity to her husband's.

Mr. President, I digress to assert that none of these so-called disabilities are imposed upon the business or professional women who elect not to become wives or mothers. I also take the risk of saying that this paragraph which I have just read is written by young ladies who have never been married.

I continue to read:

Much of the national discussion about women's status has focused on marriage and divorce laws, and rightly so, because the issues involved are important to people personally, and because women's domestic role has traditionally been considered their primary one.

Unquestionably, the trend in marriage and divorce law is in the direction of treating the spouses equally or on the basis of their individual capacities. Progressive present-day models for change in the area of family law eliminate virtually all differentiation on the basis of sex. Thus, in most instances, the effect of the Equal Rights Amendment on marriage and divorce law will be to move the law more directly, more forcefully, and more expeditiously in the direction it is already going.

In considering the following discussion of the impact of the Equal Rights Amendment on some aspects of domestic relations law, the reader should keep in mind the law's limited power to predetermine and control the nature of intimate personal relationships. In the realm of marriage and the family, social customs, economic realities, and individual preferences have a far greater influence on behavior than the law.

I digress to thank the Almighty that this is so.

I resume reading:

This is not to say that the law does not play an important role in shaping and channeling these other forces, but rather to point out that a change in the law—insofar as the change leaves room for choice, as do the possibilities suggested below—will not result in immediate widespread change in what are essentially social customs. Furthermore, it is important to remember that the impact of the marriage and divorce laws varies according to the economic class of the family. In preparing this section, we have been limited by the dearth of academic research about the differential impact of domestic relations law according to economic class.

1. LAWS AFFECTING THE ACT OF MARRIAGE

The statutory requirements for a lawful marriage are generally very simple. They include in most states a valid license, a waiting period before issuance of the license, a medical certificate, proof of age, parental consent for parties below the age of consent, and a ceremony of solemnization. Of these, only

age requirements for marriage with and without parental consent involve widespread discrimination on the basis of sex. A 1967 survey of state marriage laws by the United States Department of Labor showed that only ten states set the same minimum age for marriage (age below which marriage, even with parental consent, is prohibited) for men and women. Only eighteen states set the same age of consent (age at which marriage is permitted without parental consent) for both men and women. In every state with an age differential, the minimum age for men was one to three years higher than the minimum age for women.

Since the minimum marriage age in all states is now well above the normal age of puberty, physical capacity to bear children can no longer justify a different statutory marriage age for men and women. Instead, there seem to be two current rationales for the higher marriage age for men. One is that, mentally and emotionally, women mature earlier than men. Maturity is such a relative and subjective concept that a court could never use it as a test for an inborn characteristic distinguishing all women from all men. Furthermore, mere estimates of emotional preparedness founded on impressions about the "normal" adolescent boy and girl are based on the kind of averaging which the Equal Rights Amendment forbids. The other rationale for the age difference is that men should not be distracted during adolescence from education and other preparation for earning a living. This rationale is obviously untenable: the law should give as much encouragement to women to prepare themselves to earn a living as it gives to men.

Under the Equal Rights Amendment, a court challenge to the age differential would most likely be made by a man suing to require issuance of a license to him at the lower women's age. Faced with such a challenge to the state law a court would have to find, for the reasons just discussed, that the marriage age differential did not meet the strict criteria of the unique physical characteristics tests required by the Equal Rights Amendment. Once it had concluded that a state could not constitutionally set one marriage age for men, and one for women, a court would be able to increase the marriage age for women upward to match the age for men, on the theory that the state should be equally solicitous of a woman's training as a man's. Or a court might find that the legislature had pegged the age for men unreasonably high and revise the marriage age for men downward to correspond to the marriage age for women. A legislature reconsidering laws about the minimum age for marriage, either before or after a court challenge, would have to set a single age for men and women after weighing the policy considerations underlying the age limit. These considerations might indicate the higher age, the lower age, or an age in between the two.

I digress to observe that if this be a correct interpretation of the equal rights amendment, the courts are to have the powers to make laws rather than the power to interpret laws. I base that on the statement of the authors that under the equal rights amendment a court could lower the marriageable age of men down to the marriageable age of women, or raise the marriageable age of women up to the marriageable age of men. Personally, I think courts have enough jobs to do when they stick to their judicial knitting and leave the making of the laws to legislative bodies.

2. MERGER OF THE WOMEN'S LEGAL IDENTITY INTO HER HUSBAND'S

a. *Name Change.* The requirement that a woman assume her husband's name at the

time she marries him is based on long-standing American social custom. It is also firmly entrenched in statutory and case law. In some states statutes indicate that a married woman must not only take but keep her husband's name. Women who continue to use their maiden names after marriage may encounter resistance from the Internal Revenue Service, voting registrars, motor vehicles departments or any number of non-governmental sources.

I emphasize the following sentence:

The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage. In a case where a married woman wished to retain or regain her maiden name or take some new name, a court would have to permit her to do so if it would permit a man in a similar situation to keep the name he had before marriage or change to a new name. Thus, common law and statutory rules requiring name change for the married woman would become legal nullities. A man and woman would still be free to adopt the same name, and most couples would probably do so for reasons of identification, social custom, personal preference, or consistency in naming children.

However, the legal barriers would have been removed for a woman who wanted to use a name that was not her husband's.

Some state legislatures might decide there was a governmental interest, such as identification, in requiring spouses to have the same last name. These states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both.

I digress to say it would be a terrible thing if the husband and wife could not agree on the last name under the equal rights amendment. That is one cause of friction which does not exist now, but would arise under the equal rights amendment.

I resume reading:

Similarly, statutes which now permit the judge in a divorce case to use discretion in determining whether to allow a woman to resume her maiden name or to take a new name would be extended under the Equal Rights Amendment to cover all men, or at least men who had changed their names at marriage. Moreover, any state coercion regarding an individual's choice of name might still be open to attack under developing constitutional principles of due process and privacy.

In a state where both spouses were required to have the same last name, the children would simply take their parents' name. If the state had no requirement that husband and wife take the same name, it could either require that parents choose one of their names for their children, or it could decide to have no rule at all. The Amendment would only prohibit the states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's.

I want to digress from the reading to call attention to what a drastic impact this interpretation of the equal rights amendment, in respect to the names of husbands, wives, and children, would have upon the existing law and the fact that the change would serve no useful purpose whatever.

I call attention to the minority views contained in the report on this measure at pages 50, 51, and 52:

One of the most interesting assertions of the article in the *Yale Law Journal* which Representative Griffiths says "explains the workings of the amendment," is the statement that:

"The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage. . . . The states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both. . . . thus common law and statutory rules requiring name change for the married woman would become legal nullities."

The effects of this requirement on the record-keeping demanded by our society would be staggering. Imagine an attorney searching a land title with this type of last-name system.

The wisdom of allowing a state to determine that a wife's legal name shall be that of her husband has just been upheld 8-0 in a per curiam decision of the Supreme Court in the case of *Forbush v. Alabama*. The interest of the State in maintaining control over licensees and requiring the most efficient way to do so should be obvious to everyone, as it was to all the members of the Supreme Court. But it's not obvious to the proponents of the ERA who want to abolish all legal pronouncements favoring the husband's surname.

Just a cursory check of only a very few of the laws of the states will indicate just how far-reaching the Equal Rights Amendment will be in this area alone. Most states appear to recognize the common law rule that a wife assume her husband's surname. *E.g. People ex. rel. Rago v. Lipsky*, 327 Ill. App. 63, 63 N.E. 2d 642 (1945); *Freeman v. Hawkins*, 77 Tex. 498, 14 S.W. 364; *Chapman v. Phoenix National Bank of the City of New York*, 85 N.Y. 437 (1881); *Bacon v. Boston Electric Railway Co.*, 256 Mass. 30, 152 N.E. 35 (1926).

In addition, many state statutes are based upon the assumption that a woman assumes her husband's surname upon marriage. For example, statutes relating to the issuance of driver's licenses often include a provision requiring licensed drivers to notify a state agency of changes in name resulting from marriage. *See, e.g. Colo. Rev. Stat. Ann. Sec. 13-4-17; Fla. Stat. Ann. Sec. 322-19; Ill. Ann. Stat. Ch. 95½, Sec. 6-116; Ind. Ann. Stat. Sec. 47-2710; Kan. Stat. Ann. Sec. 8-248; Ky. Rev. Stat. Sec. 186-540; Me. Rev. Stat. tit. 29, Sec. 546; Minn. Stat. Ann. Sec. 171.11; Mont. Rev. Codes Ann. Sec. 31-140; N.M. Stat. Ann. Sec. 64-13-53; N.D. Century Code Sec. 39-06-20; Okla. Stat. Ann. tit. 47, Sec. 6-116; R.I. Gen. Laws Ann. Sec. 31-10-32; S.C. Code Ann. Sec. 46-170; Tenn. Code Ann. Sec. 59-708; Tex. Rev. Civ. Stat. Ann. Art. 6687b, Sec. 20; W. Va. Code Ann. Sec. 173-2-13.*

State statutes relating to divorce often authorize courts to change a woman's name upon divorce. *See, e.g., Alaska Stat. Sec. 09.55.010 (no court order necessary); Arizona Rev. Stat. Ann. Sec. 25-319; Ark. Stat. Ann. Sec. 34-1216; Cal. Civ. Code Sec. 4457 (annulment), 4521 (dissolution); Conn. Gen. Stat. Ann. Sec. 46-21; Del. Code Ann. tit. 3, Sec. 1536; D.C. Code Ann. Sec. 16-915; Ga. Code Ann. Sec. 30-121; Hawaii Rev. Laws Sec. 574-5; Ill. Ann. Stat. ch. 40, Sec. 17; Ind. Ann. Stat. Sec. 3-1225; Kan. Stat. Ann. Sec. 60-1610; Ky. Rev. Stat. Ann. Sec. 403.060 (if divorce obtained by wife); Me. Rev. Stat. Ann. tit. 19, Sec. 752; Mass. Gen. Laws Ann. ch. 208, Sec. 23; Mich. Comp. Laws Ann. Sec. 552.391 (if no minor children); Minn. Stat. Ann. Sec. 518.27 (if wife obtained divorce); Mo. Ann. Stat. Sec. 452.100 (if wife obtains divorce); Nev. Rev. Stat. Sec. 125.130; N.J. Stat. Ann. Sec. 2A:34-21; N.C. Gen. Stat. Sec. 50-12; Okla. Stat. Ann. tit. 12, Sec. 1278 (if husband at fault); Ore. Laws 1971, ch. 280,*

Sec. 13; Pa. Stat. Ann. tit. 23, Sec. 98 (woman may elect to use maiden name after divorce); R.I. Gen. Laws Ann. Sec. 15-5-17 (if wife obtains divorce); S.C. Code Ann. Sec. 20-117; Tex. Rev. Civ. Stat. art. 5931 (either party may change name upon divorce); Vt. Stat. Ann. tit. 15, Sec. 557 (if wife obtains divorce); Va. Code Ann. Sec. 20-121; Wash. Rev. Code Ann. Sec. 26.08.130; W. Va. Code Ann. Sec. 48-2-23 (if no children); Wis. Stat. Ann. Sec. 247.20 (if no children and no alimony).

State voter registration laws often include provisions requiring women to reregister when their names are changed by marriage. *See, e.g., Colo. Rev. Stat. Ann. Sec. 49-4-19; Del. Code Ann. tit. 15, Sec. 1750; Ill. Ann. Stat. ch. 46, Sec. 46, Sec. 6-54; Ind. Ann. Stat. Sec. 29-3428 (but women may vote or run for office under professional name); Kan. Stat. Ann. Sec. 25-2316; Ky. Rev. Stat. Ann. Sec. 117.735; La. Rev. Stat. Ann. Secs. 18:41, 234, 241; Me. Rev. Stat. Ann. tit. 21, Secs. 638, 831 (notification of change required); Md. Ann. Code art. 33 Secs. 3-9, 3-18; Mass. Gen. Laws Ann. ch. 51 Sec. 2 (notification); Neb. Rev. Stat. Sec. 32-216; Nev. Rev. Stat. Sec. 293.517; N.J. Stat. Ann. Sec. 19:31-13; N.M. Stat. Ann. Sec. 3-4-5; Ohio Rev. Code Ann. Sec. 3503.19 (not necessary to reregister if name is not changed upon marriage); Ore. Rev. Stat. Secs. 247.290, 247.440; R.I. Gen. Laws Ann. Sec. 17-9-18 (notification); S.D. Comp. Laws Ann. Sec. 12-4-18; Tenn. Code Ann. Secs. 2-303, 2-305; Va. Code Ann. Sec. 24.1-51; Wash. Rev. Code Ann. Sec. 29.10.040.*

State laws regulating notaries public also often contain provisions involving name changes resulting from marriage. *See, e.g., Iowa Code Ann. Sec. 77.12 (married female notaries may continue to use maiden names); N.J. Stat. Ann. Sec. 52:7-7 (married female notaries to use hyphenated name); Pa. Stat. Ann. tit. 57, Sec. 156 (female married notaries must notify state agency of change of name); Va. Code Ann. Sec. 55-117 (female married notaries to indicate maiden name); Wyo. Stat. Ann. Sec. 32-2 (female married notaries to notify state agency of name change and to add husband's surname to signature).*

State statutes which authorize civil actions for change of name also sometimes have provisions which are clearly based on the assumption that a wife's legal surname is the surname of her husband. *See, e.g., Iowa Code Ann. Sec. 674-1 (married woman may not bring action to change her name); Iowa Code Ann. Sec. 674-10 (if husband changes his surname, wife's name is also changed); Ky. Rev. Stat. Ann. Sec. 401-010 (married women not allowed to change name); Mich. Comp. Laws Ann. Sec. 711.1 (if husband changes name, wife's name also changes); Minn. Stat. Ann. Sec. 259.10 (if husband changes name, wife's name changes if she joins in the application-statute does not indicate what happens if wife fails to join in application); Vt. Stat. Ann. tit. 5, Sec. 814 (if husband changes name, wife's name also changes).*

Finally, in some state statutes reference is made to "change of legal name" without it being specified whether this includes name changes resulting from marriage. *See e.g., Mass. Gen. Laws Ann. ch. 30, Sec. 13 (notaries must reregister upon change of name); Neb. Rev. Stat. Sec. 64-114 (notaries changing legal name may continue to use name under which they received commission); N.H. Rev. Stat. Ann. Sec. 261-2 (driver's license holders required to make notification of change of legal name may continue to use name under (notaries to apply for change of name on commission upon legal change of name)).* In light of the common law rule, however, such provisions are likely to be held to apply to changes of name by marriage.

It should be noted, in conclusion, that the above listing of state statutes is not exhaustive. Rather, it is meant to suggest the kinds

of state statutes which include provisions based upon the assumption that a woman's legal name changes upon marriage.

Mr. President, those are just a few of the many thousands of State laws which would be nullified by an equal rights amendment. This shows that we would have absolute chaos from a legal standpoint if 38 of the States should be so foolish as to emulate the august example that Congress is about to set, and ratify the equal rights amendment.

I resume the reading from the *Yale Law Journal*:

b. *Domicile*. The location of a person's domicile affects a broad range of legal rights and duties, including the place where he or she may vote, run for public office, serve on juries, receive free or lowered tuition at a state school, be liable for taxes, sue for divorce, and have his or her estate administered. The common law rule for determining the wife's domicile was simple: the domicile of the wife merged in that of her husband; moreover, she had the duty to follow him if his choice was a reasonable one, and her refusal to do so was considered desertion. Legislative or judicial changes have modified this blanket rule in most states for some purposes, most commonly for divorce jurisdiction. However, only three states—Alaska, Arkansas, and Wisconsin—permit a woman to have a separate domicile from her husband for all legal purposes.

A court suit challenging discriminatory domicile rules could arise after a woman had been denied some right or benefit because her husband's domicile had been imputed to her. In such a suit a court would have to hold that the Equal Rights Amendment requires rules governing domicile to be the same for married women as for married men. Extending women's dependent status to men would simply create a circular situation with each spouse's domicile dependent on the other's. Thus, equal treatment of men and women for purposes of domicile implies giving married women the same independent right to choice of domiciles as married men now have. A court would probably resolve the inequality by striking down whatever statute or portion of a statute sets out a special rule for married women. It would leave standing the general domicile law which would automatically be extended to married women. For similar reasons, a court would do away with the rule that refusal to accompany or follow a husband to a new domicile amounts to desertion or abandonment. A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home, unless the state also permitted the wife to sue for divorce if her husband unjustifiably refused to accompany her in a move.

These results would cause little disruption.

Mr. President, I must repeat that statement:

These results would cause little disruption and would be beneficial to those women who are now adversely affected by the domicile law. Professor Kanowitz concludes that the domicile rule "has become useless as an influence within the family. Its most important practical effects are to deprive wives of certain governmental benefits they would otherwise have and to create technical legal difficulties for third parties. The cases in which the issue is raised typically do not involve the resolution of a dispute between spouses in an ongoing marriage. . . . Its retention serves only to evoke bygone images of the husband as master and the wife as obedient servant."

With respect to children, the traditional rule is that the domicile of legitimate chil-

dren is the same as their father's. Even those states which permit a married woman to have a separate domicile from her husband appear to retain this rule with respect to the child's domicile. The Equal Rights Amendment would not permit this result. Either by legislative action or judicial determination, a state would have to devise a sex-neutral basis for determining the child's domicile.

I have to observe at this point, oh, how these militants who advocate equal rights for women must hate sex, to judge from their efforts in seeking to abolish it. I resume the reading:

Either by legislative action or judicial determination, a state would have to devise a sex-neutral basis for determining the child's domicile. The most reasonable domicile would be the place the child actually lives most of the time.

I digress to observe that if that means anything, it means that a child, by running away from home, can select its own domicile, despite its immaturity, and despite the fact that existing laws require the father to support the child—in the father's home.

I resume the reading:

If the family lives together but one of the parents is domiciled in a separate place, the child's domicile should be the place of family residence. If the parents live apart, then the child's domicile should be the domicile of the parent with whom he or she lives most of the time. Alternatively, the state could allow the child to determine his or her own domicile on the basis of where he or she actually lives or works, if apart from both parents.

3. RIGHTS OF HUSBANDS AND WIVES INTER SE

The reluctance of courts to interfere directly in an ongoing marriage relationship is a standard tenet of American jurisprudence. As a result, legal elaboration of the duties husbands and wives owe one another has taken place almost entirely in the context of the breakdown of the marriage—either voluntary breakdown through separation, desertion, or divorce, or involuntary breakdown through incapacitation or death. Any legal changes required by the Equal Rights Amendment are thus unlikely to have a direct impact on day-to-day relationships within a marriage, because the law does not currently operate as an enforcer of a particular code of relationships between husband and wife.

a. *Rights of Consortium.* One of the law's most comprehensive efforts to define the rights and obligations of the partners to a marriage relationship occurs in personal injury actions, after one or the other spouse has been seriously incapacitated. In order to instruct the jury as to the proper standards for awarding damages, the judge must define what benefits the plaintiff should have expected from his or her now incapacitated spouse. At common law these standards were rigidly defined and totally male-oriented. A man had a right to recover damages for loss of his wife's services when she was injured by intentional or negligent action. In time, a husband's rights of consortium were defined to include love, affection, companionship, society, and sexual relations. A woman, by contrast, had no right to sue for loss of her husband's services, since in theory, he provided none.

The Equal Rights Amendment would not permit men to have a greater right than women to recover for loss of their spouse's services and companionship. Courts in many states have already extended to women the right to sue for loss of consortium, although some courts continue to uphold this differential between men's and women's rights. The Equal Rights Amendment would settle the current uncertainty and disagreement among

the states by requiring them all to grant women the same right to sue that men now have.

More fundamentally, however, the Equal Rights Amendment would prohibit enforcement of the sex-based definitions of conjugal function, on which the discriminatory consortium laws are based. Courts would not be able to assume for any purpose that women had a legal obligation to do housework, or provide affection and companionship, or be available for sexual relations, unless men owed their wives exactly the same duties. Similarly, as discussed more fully below, men could not be assigned the duty to provide financial support simply because of their sex.

Mr. President, I digress from the reading to emphasize the last sentence from the Yale Law Journal. It states that under the equal rights amendment, men could not be assigned the duty to provide financial support for their wives simply because of their sex. I assert that if that be so—and it necessarily is so, because the equal rights amendment would abolish all legal distinctions between men and women, no matter how reasonable they are—then the courts of this land would have a highly uncertain duty and would be confronted by legal confusion every time they had a husband indicted for nonsupport of a wife, every time a wife sued the husband to recover sums expended by her for her own support, and every time a wife sought alimony from her husband in a divorce or a support proceeding.

This illustrates the truth of what Prof. Paul A. Freund of the Harvard Law School said—that the adoption of the equal rights amendment would fill this country with "constitutional and legal chaos" and would make every law regulating in any way the relationship of men and women a matter to be ultimately decided by the Supreme Court of the United States. That means every law, for all practical intents and purposes.

The only reason we have any law is to prescribe rules of conduct for people; and there are only two kinds of people—the equal rights amendment to the contrary notwithstanding—and those people are divided into men and women. So all will be involved in a state of constitutional and legal uncertainty if this amendment is adopted.

I digress from reading the article in the Yale Law Journal to read a telegram which has just been sent to me by Rabbi Boruch Liebowitz. The telegram reads as follows:

DEAR SENATOR ERVIN: The Rabbinical Alliance of America, a national organization representing over 500 orthodox rabbis and Hebrew educators, is alarmed over the threat to religious practices and feelings of orthodox Jews inherent in the proposed so-called Womens Rights Amendment.

The implicit sanction in the proposed amendment for drafting women into the armed services is a direct threat to orthodox Jewish women who could be subjected to intolerable pressures even with allowances for conscientious objectors.

The possibility of the proposed amendment, if enacted, ending separate restroom facilities in transportation and elsewhere is abhorrent to our people.

This bill could jeopardize the maintenance of separate day-school education for boys and girls in many Jewish communities.

We, therefore, respectfully request that Congress carefully consider our feelings and

that any proposal for equal rights for all Americans, which we as Jews have long championed, clearly specify that the religious practices of our faith shall be in no way harmed or endangered.

RABBI ABRAHAM GROSS,
President.
RABBI BORUCH LIEBOWITZ,
Administrator.

I now resume reading from the Yale Law Journal, and I start with section 6, entitled "Allocation of the Duty of Family Support Between Husband and Wife":

b. *Allocation of The Duty of Family Support between Husband and Wife.* In all states husbands are primarily liable for the support of their wives and children, although the details of this liability and the possible defenses vary. A wife may be liable for supporting her husband in many states, but generally only if the husband is incapacitated or indigent. In most states the mother is liable for support of the children only if the father refuses or fails to provide for their support.

Criminal nonsupport laws are the legal system's most heavy-handed technique for enforcing the husband's current duty of support. Nonsupport was not an indictable offense at common law. But criminal statutes in all but three states now penalize a man's desertion or nonsupport of his wife, and all American jurisdictions set criminal penalties for nonsupport of young children. While these laws typically penalize either parent who fails to provide support for a minor child, the duty of interspousal support is placed solely on the man.

The child-support sections of the criminal nonsupport laws would continue to be valid under the Equal Rights Amendment in any jurisdiction where they apply equally to mothers and fathers. However, the sections of the laws dealing with interspousal duty of support could not be sustained where only the male is liable for support. Applying rules of narrow construction of criminal laws, courts would have to strike down nonsupport laws which impose the duty of support on men only. Legislatures might decide not to re-enact any husband-wife criminal nonsupport laws. Criminal sanctions against the husband are widely recognized as poor compensation for a wife's unpaid domestic labor and discriminatory treatment against her in the labor market; a legislature might choose to use its resources for a more direct attack on these problems. Alternatively, a state legislature could adopt a law which makes no distinctions on the basis of sex, like the Model Penal Code's nonsupport provision.

I digress here to say that this is a direct assertion that the equal rights amendment will invalidate every law now in existence which makes a husband primarily responsible for the support of his wife, and which makes the father primarily responsible for the support of his children.

If there was no other basis for rejecting the equal rights amendment than that, that alone should justify its rejection.

I resume reading:

With regard to civil enforcement of support laws, courts could take a more flexible approach.

The PRESIDING OFFICER (Mr. PEARSON). The time of the Senator from North Carolina, under the unanimous-consent agreement, has expired.

Mr. ERVIN. Mr. President, may I ask how much time I have remaining on the bill?

The PRESIDING OFFICER. The Senator has 252 minutes remaining.

Mr. ERVIN. That is about 4 hours if

my mathematics are correct. I yield myself such time on the bill as I may use.

The PRESIDING OFFICER. The Senator from North Carolina may proceed.

Mr. ERVIN. Mr. President, I resume reading:

The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex. However, a court could equalize the civil law by extending the duty of support to women.

I digress a moment here to observe that that is another assertion made by the proponents of the equal rights amendment, that under the equal rights amendment the courts could usurp and discharge the legislative function of making the laws.

Perhaps I am somewhat old fashioned in my views, but I think that the court has enough to do if it just sticks to its judicial knitting, without attempting to invade the field of the legislature. There is no doubt that the court will not be able to extend laws limited to women, to men.

I resume reading:

With regard to child support this is already the rule in Iowa, where father and mother are under the same legal duty to support the children.

Alarmists claim that the Equal Rights Amendment would change the institution of the family as we know it by weakening the husband's duty of marital support in an ongoing marriage. This concern is based on a misunderstanding of the role laws about support actually play. Many courts flatly refuse to enter a support decree when the husband and wife are living together. In most such cases the husband, as head of the family, is free to determine how much or how little of his property his wife and children will receive.

Mr. President, I digress here to say that if there is any court in the United States that says a husband can permit his wife to starve to death while she is living with him, I have never heard of it.

I am glad to say that the Legislature of the State of North Carolina has had more intelligence than that, that a husband can be reached either criminally or civilly if he fails to support his wife while he and his wife are living together.

I resume reading:

The Equal Rights Amendment would not require mathematically equal contributions to family support from husband and wife in any given family. A functional definition of support obligations, based on current resources, earning power, and nonmonetary contributions to the family welfare, would be permissible and practical under the Equal Rights Amendment, so long as the criteria met the tests of reasonable classification described above in Part III(C). If husband and wife had equal resources and earning capacity, neither would have a claim for support against the other. However, if one spouse were a wage earner and the other spouse performed uncompensated domestic labor for the family, the wage-earning spouse would owe a duty of support to the spouse who worked in the home. Creating in each spouse equal liability for support might give creditors an advantage in some instances where they would not currently be able to reach the wife's resources. If this extra liability created hardship for families, the legislature could make rules limiting the extent of creditors' access to a family's resources.

Mr. President, I digress here to ob-

serve that in one of James Russell Lowell's poems, a father gives his son the advice not to marry for money but to marry where the money is.

The equal rights amendment would certainly encourage some sons to take that advice of their fathers', because if the wife had some money or some property, the son could compel the wife to support him under this interpretation of the equal rights amendment, which I take to be absolutely correct.

I resume reading:

c. *Ownership of Property.* The law has attempted to recognize women's contribution to the family by giving each spouse an interest in property acquired during the marriage. Two different systems have been adopted in the United States for distributing property rights within a family—the community property system and the common law system. In both systems the woman's right matures primarily upon separation or death of her spouse. As both systems currently operate, they contain sex discriminatory aspects which would be changed under the Equal Rights Amendment.

(1) *Community Property.* In the eight community property states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—property acquired by each spouse during the marriage is owned in common by both husband and wife. This system is sometimes championed by advocates of women's rights because it gives a housewife who earns no independent income a legal share in the family property. However, in all the community states, except Texas and Washington, the husband has power of management and control over the community property; and in some states he can assign, encumber or convey the property without his wife's consent. Thus, in some of the community property states a working wife may be put in the position of a woman before passage of the Married Women's Property Acts: she may lose control of her own earnings to her husband.

Under the Equal Rights Amendment, laws which vest management of the community property in the husband alone, or favor the husband as manager in any way, would not be valid. In the absence of new legislation, the courts would leave decisions about disposition of the community property to be made jointly by husband and wife. This would be consistent with the general judicial preference to allow married couples to work matters out between themselves.

Legislatures might prefer to follow the example of the recent amendment of the Texas community property law. The new Texas law provides that "each spouse shall have sole management, control and disposition of that community property which he or she would have owned if a single person."

Mr. President, I digress to observe that this virtually nullifies the community property system.

I resume reading from the Yale Law Journal:

Rather than leaving decisions about the community property to husband and wife together, this rule would give the spouse who had earned or been given property the power to dispose of it. This rule obviously favors the wage-earning spouse, who in most instances under current conditions will be the man. Thus it would require scrutiny as a rule neutral on its face, which falls more heavily on one sex than the other. The Texas law also states that property of one spouse which is mixed or combined with property of the other spouse is subject to the joint control of husband and wife unless they agree otherwise. This part of the law would certainly be valid under the Equal Rights Amendment.

(2) *Common Law Ownership.* The other forty-two states have a common law basis for distributing marital property. However, Married Women's Property Acts in every state have modified the harsh common law principles that gave the husband complete control over his wife's property and the products of her labors. With certain exceptions these statutes give a woman the right to control property she owned before marriage as well as property she earns or receives by gift or devise during marriage. Except for qualifications relating to the right of a surviving spouse to inherit, therefore, each spouse now owns his or her separate property free of legal control of the other spouse.

The Married Women's Property Act did not automatically abolish the common law estates of dower and curtesy, but today most states have abandoned these cumbersome devices for protecting the interests of widows and widowers, and others have modified them substantially. In their place, the states have substituted other forms of protection of a marital share of the property of one or both spouses. All states except North Dakota and South Dakota give the woman a nonbarrable share in her husband's estate, but a number of states fail to give the husband a corresponding legal claim in his wife's estate. The widow's allowance or family allowance, homestead, and limitation on gifts to charity are other devices to protect a surviving spouse against complete disinheritance.

Where these devices give the surviving husband rights equal to the surviving wife, they would be valid under the Equal Rights Amendment. In the many states, however, where the wife still has a protected position, the discriminatory laws would either be invalidated or extended. Where a legal device has proved to be a useful protection, legislatures would probably be inclined to extend its coverage to men, but where the technique has provided little real protection, the legislatures could take the opportunity for review provided by the Equal Rights Amendment to revise or repeal the law.

d. *Grounds for Divorce.* Professor Leo Kanowitz points out that "there is almost an air of unreality about the enumeration of specific grounds of divorce found in the statutes of all the states." This is because the great mobility of middle class Americans permits them to go to a state which has liberal grounds for divorce, or abroad, when they want to dissolve a marriage. In addition, a high proportion of couples seeking divorce agree to allege as fictions the requisite grounds for divorce. Furthermore, divorce laws have typically been written in terms that make sense only to an ongoing marriage, permitting divorce if, and only if, a fundamental element of the marriage compact has been violated.

Recognizing these factors, as well as the unreasonableness of permitting divorce only for certain limited and specific reasons, proponents of legislative reform recommend evaluating the overall health of the marriage rather than pinning particular guilty action on one or the other of the spouses. The Uniform Marriage and Divorce Act, adopted by the National Conference of Commissioners on Uniform State Laws, provides for a decree of separation or divorce to be granted upon a finding that "the marriage is irretrievably broken." California currently permits divorce on a finding of irreconcilable differences between the parties. North Carolina, Ohio, and the District of Columbia permit a divorce after voluntary separation for a year. Nevertheless, the statutory grounds for divorce which remain in effect in most states are of concern because they still control in contested divorce situations, because they affect the economic and personal relations of the parties even if consent divorces, and because there is evidence that they cause a disproportionate amount of difficulty to poor people.

In the past many grounds for divorce were highly sex discriminatory; today only a few apply solely to one sex or the other. These are non-age, pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband if and only if accompanied by wasting of his estate to the detriment of his wife and children, wife's unchaste behavior (without actual proof of adultery), husband's vagrancy, wife's absence from state for ten years without husband's consent, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, husband a drug addict, indignities by husband to wife's person, and wilful neglect by husband.

Except for nonsupport and pregnancy, all the sex discriminatory grounds for divorce listed above are anachronisms, surviving in only one or two states, and are not deserving of extended discussion here. In each instance, a court could invalidate such a provision without doing any serious harm to the overall structure of the state's divorce law. On the other hand, the court could also extend the law to the opposite sex without risking serious criticism that it was usurping legislative authority.

I digress to observe that is a very remarkable statement, that a court acting under the equal rights amendment could change the law of the State without risking serious criticism to its usurping legislative authority.

I resume the reading:

Even without the pressure of the Equal Rights Amendment, these provisions are likely to be dropped or extended to the opposite sex in the course of divorce law reform.

Of the thirty states which allow a woman a divorce for nonsupport, only two—Arkansas and North Dakota—give a husband whose wife has failed to support him a cause of action. This disparity is a reflection of the sex bias in support laws, described above. Like the duty of support during marriage and the obligation to pay alimony in the case of separation or divorce, nonsupport would have to be eliminated as a ground for divorce against husbands only, or else extended to the wife where the husband was without resources and the wife had the financial capacity to support him.

The laws that grant a husband a divorce because at the time of marriage he did not know his wife was pregnant by another man would be subject to strict scrutiny under the unique physical characteristics tests. As with paternity laws, the argument can be made that the ease of identifying the mother of a child, as opposed to the difficulty of identifying the father, is a kind of unique physical characteristic which justifies different rules regarding the relationship of mothers and fathers to illegitimate children.

However, no reason exists for distinguishing between the duties and obligations of the mother and the father when the father of an illegitimate child has acknowledged paternity or has been adjudged the father in a paternity proceeding. Furthermore, the divorce laws are not based primarily upon the physical act of giving birth but upon other considerations. The laws derive, at least in major part, from the fact that any child born of a woman during marriage is presumed to be her husband's child. Whether the husband claims the child or not, the law imposes on him the duty to support the child and gives the child his name. In this respect the law places an unequal burden on the husband, for his wife receives no corresponding obligations to support or nurture any children her husband may conceive. Since the Equal Rights Amendment would require men and women to bear equal responsibility for the support and nurture of their children, it eliminates most of the justification for giving men alone this ground of divorce. The

Equal Rights Amendment would permit resolution of the disparity either by giving a woman a claim for divorce if, at the time of marriage, she did not know that her husband had impregnated another woman, or by abolishing the ground altogether.

I digress to observe that that is a rather remarkable statement that the equal rights amendment might invalidate a State law which grants the husband grounds for divorce against his wife if his wife is pregnant by another man at the time of his marriage and he is ignorant of the fact of such pregnancy.

e. *Alimony*. Alimony following divorce involves issues similar to those discussed above in connection with support laws. However, a different set of laws and rules is involved. In jurisdictions where fault is still central to divorce proceedings, alimony awards are closely linked to the judicial determination of fault. More than one-third of the states authorize divorce courts to grant alimony to either spouse, but the remaining jurisdictions permit alimony awards to the wife only.

The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives. This result is consistent with the recommendations of Robert Levy to the Special Committee on Divorce of the National Conference of Commissioners on Uniform State Laws, who concludes,

[T]he distinction [permitting alimony for wives but not husbands] is an historical idiosyncrasy; there is no principle reason for maintaining the distinction between husbands and wives; almost all recent commentators and official studies of divorce-property doctrines have recommended that the distinction be abolished.

I digress to observe that would be quite a surprise for the women of America to learn that the equal rights amendment will require them to pay alimony to their husbands on exactly the same grounds their husbands are required to pay alimony to them.

I resume the reading.

Alimony laws could be written to grant special protection to a spouse who had been out of the labor force for a long time in order to make a non-compensated contribution to the family's well-being. Similarly the laws could provide support payments for a parent with custody of a young child who stays at home to care for that child, so long as there was no legal presumption that the parent granted custody should be the mother. In short, as long as the law was written in terms of parental function, marital contribution, and ability to pay, rather than the sex of the spouse, it would not violate the Equal Rights Amendment.

The maintenance provisions of the Uniform Marriage and Divorce Act serve as an example of the kind of law which would be valid under the Equal Rights Amendment. The Act provides for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for his reasonable needs and is unable to support himself through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the parent not seek employment outside the home. The amount and duration of payments for maintenance are to be determined after the court considers the financial resources of the party seeking maintenance, the time necessary to acquire sufficient training to enable the party to find appropriate employment, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the

spouse seeking maintenance, and the ability of the spouse from whom maintenance is sought to meet his or her own needs while making maintenance payments.

f. *Custody of Children*. At common law the father, if living, was the natural guardian of his child and as such was nearly always entitled to custody of the children in case of separation or divorce. Some states, including California and Utah, changed this by statute which prefers the mother if the child is young. Others, including Missouri, Florida, Minnesota, New York, and Colorado, give both spouses equal right to custody of the children. In most states there is no statute favoring one parent or the other; rather, preference for the mother or father exists as a result of judicially created presumptions in favor of the mother for girls and young children and in favor of the father for older boys.

The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent. Given present social realities and subconscious values of judges, mothers would undoubtedly continue to be awarded custody in the preponderance of situations, but the black letter law would no longer weight the balance in this direction.

4. SUMMARY

The present legal structure of domestic relations represents the incorporation into law of social and religious views of the proper roles for men and women with respect to family life. Changing social attitudes and economic experiences are already breaking down these rigid stereotypes. The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex.

I digress to observe that is a rather remarkable statement. The equal rights amendment would prohibit dictating different roles for men and women within the family on the basis of their sex.

I resume the reading:

Most of the legal changes required by the Amendment would leave couples free to allocate privileges and responsibilities between themselves according to their own individual preferences and capacities. By and large these changes could be made by courts in the process of adjudicating claims under the Amendment. In any area where the legislature felt that sudden extension of the law to men and women alike would cause undue hardship, it could pass new legislation basing marital rights and duties on functions actually performed within the family, instead of on sex.

That completes the reading of this portion of the article from the Yale Law Journal, which deals with present domestic relations between husband and wife and what domestic relations between husbands and wives would be if the equal rights amendment were adopted.

I digress to observe that Professor Kanowitz, the author of the book "Women and the Law, the Unfinished Revolution," states the equal rights amendment will have no impact on the laws making distinctions between men and women because those distinctions are based upon function and not upon sex. I wish I had the confidence that Professor Kanowitz' interpretation of the equal rights was correct. His interpretation is in sharp contrast to that of Professor Freund of Harvard Law School and Professor Kurland of the University of Chicago Law School, and that of the

late Dean Roscoe Pound of the Harvard Law School, and other illuminating statements of legal scholars which I have placed in the RECORD.

Under the interpretation of these great legal scholars, the Supreme Court is likely to hold that the equal rights amendment compels Congress and the legislatures of the 50 States to blind their eyes to sex when they enact legislation and to make and to convert all men and all women into identical legal beings, having identically the same rights and identically the same responsibilities. If that interpretation should prevail, then one can only say that the equal rights amendment constitutes an effort to destroy the handiwork of God when he created mankind male and female instead of one sex.

I yield the floor.

Mr. BAYH. Mr. President, I yield myself as much time as might be required.

The Senator from Indiana will be brief, inasmuch as much of this subject matter was discussed at some length yesterday, and he sees no reason to belabor further the Senate with his counterargument to that of the Senator from North Carolina. I think the Senator raises a legitimate concern. I am convinced he is sincere in his beliefs, but I think the strong weight of opinion would prove that the effect of this amendment would be contrary to that which he has outlined.

Insofar as the protection of wives and mothers, as far as alimony and children and dower rights and all other rights are concerned, what we are suggesting is that, rather than wipe out all these rights, we are going to say to a woman and to a man that each will be treated equally under the law, both men and women; that both husband and wife will be treated equally; that if a father and husband has certain rights, a wife and mother should have the same rights; that if a husband or widower has certain rights, then the wife or widow should have them. It seems to me that is what equality is all about.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. COOK. May I say I would like to be associated with the remarks of the Senator from Indiana. It bothers me that a woman can marry and have rights and responsibilities taken away from her, and then, if her husband dies and she becomes a widow, she immediately is emancipated, and then if she remarries, she goes back into the state she was in before.

It seems to me rather odd that, somehow or other, we should make a chisel out of a particular individual under a constitutional form of government.

It also bothers me, relative to the statement that the Creator made this great distinction between men and women, that, somehow or other, it seems to me what in effect has been said is that when the Creator made that distinction, God said to man, "You make all the laws and make them restrictive on woman."

All I can say is that it is not fortunate that woman did not take the ball first

and legislate against us, because, if that were the case, we would be here now challenging all these things. We would be here trying to say that, under a constitutional form of government, we should be equal. But instead, today, we live within the framework of the great document and under, frankly, the freest system of society in the world, save as it applies to one particular segment of our society, 53 percent of our society, the female individual in this Nation.

I yield back the remainder of my time.

Mr. President, have the yeas and nays been requested?

The PRESIDING OFFICER. No; they have not.

Mr. COOK. Mr. President, we yield back our time.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were not ordered.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I yield myself whatever time I may need, pending the arrival of one of our brethren.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. TUNNEY). The question is on agreeing to the amendment (No. 1068) of the Senator from North Carolina (Mr. ERVIN). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 14, nays 77, as follows:

[No. 116 Leg.]

YEAS—14

Buckley	Eastland	Hollings
Byrd, Va.	Ervin	Long
Cannon	Fannin	Miller
Cooper	Goldwater	Stennis
Cotton	Hansen	

NAYS—77

Alken	Fulbright	Pearson
Allen	Gambrell	Pell
Allott	Gravel	Percy
Anderson	Griffin	Proxmire
Baker	Gurney	Randolph
Bayh	Harris	Ribicoff
Beall	Hart	Roth
Bellmon	Hatfield	Saxbe
Bennett	Hruska	Schweiker
Bentsen	Hughes	Scott
Bible	Inouye	Smith
Boggs	Javits	Sparkman
Brock	Jordan, N.C.	Spong
Brooke	Jordan, Idaho	Stafford
Burdick	Kennedy	Stevens
Byrd, W. Va.	Magnuson	Stevenson
Case	Mansfield	Symington
Church	Mathias	Taft
Cook	McGee	Talmadge
Cranston	Metcalf	Thurmond
Curtis	Mondale	Tower
Dole	Montoya	Tunney
Dominick	Moss	Weicker
Eagleton	Muskie	Williams
Ellender	Nelson	Young
Fong	Pastore	

NOT VOTING—9

Chiles	Jackson	McIntyre
Hartke	McClellan	Mundt
Humphrey	McGovern	Packwood

So Mr. ERVIN's amendment (No. 1068) was rejected.

MESSAGES FROM THE PRESIDENT— APPROVAL OF BILLS AND JOINT RESOLUTION

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that the President had approved and signed the following acts and joint resolution:

On March 17, 1972:

S. 602. An act to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in paragraphs 7 and 10, docket No. 50233, U.S. Court of Claims, and for other purposes;

S. 996. An act relating to the transportation of mail by the U.S. Postal Service;

S. 3244. An act to amend the Military Construction Authorization Act, 1970, to authorize additional funds for the conduct of an international aeronautical exposition; and

Senate Joint Resolution 190. Joint Resolution to provide for an extension of the term of the Commission on the Bankruptcy Laws of the United States, and for other purposes.

On March 18, 1972:

S. 671. An act to provide for division and for the disposition of the funds appropriated to pay a judgment in favor of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation Montana, in Indian Claims Commission docket No. 279-A, and for other purposes.

On March 21, 1972:

S. 860. An act relating to the trust territory of the Pacific Islands; and

S. 2097. An act to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. GAMBRELL) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. GAMBRELL). The Chair, on behalf of the Vice President, pursuant to Public Law 84-1028, announces the appointment of the Senator from Oregon (Mr. HATFIELD) to the Board of Visitors to the U.S. Military Academy in lieu of the Senator from North Dakota (Mr. YOUNG).

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate continued with the consideration of the joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

AMENDMENT NO. 1069

Mr. ERVIN. Mr. President, I call up my amendment No. 1069 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment as follows:

At the end of section 1 add the following sentence: "This article shall not impair the validity, however, of any laws of the United States or any State which impose upon fathers responsibility for the support of their children."

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I now yield to the Senator from New Hampshire (Mr. COTTON) such time as he may need.

Mr. COTTON. I shall only speak for 3 minutes.

Mr. BYRD of West Virginia. Would the distinguished Senator from North Carolina indicate, as there are several Senators in the Chamber at this moment, whether we might expect a vote on this amendment within the next 30 minutes?

Mr. ERVIN. The Senator from New Hampshire would be the better Senator to inform the Senator from West Virginia on that, as he has the time to speak. I shall only require two or three sentences for my statement.

Mr. COTTON. I see no reason why we could not vote within 10 minutes. I shall not take much time.

Mr. BYRD of West Virginia. Would the Senator then agree to a time limitation?

Mr. ERVIN. I shall have only two or three sentences to say. It would be up to the Senator from New Hampshire.

Mr. COTTON. Mr. President, this is the only amendment that the Senator from New Hampshire is really interested in. It is one which I have always supported in the past whenever the ques-

tion of a constitutional amendment on the rights of women has been considered.

For years, the Senator from New Hampshire has frankly informed constituents who write to him from time to time that he is perfectly willing that there shall be written into the Constitution of the United States an amendment guaranteeing equal rights for women. But, Mr. President, he has also said that he will never vote—and that goes for today—for a constitutional amendment that would release fathers from the obligation to contribute to the support of their minor children. That is why I urge the adoption of this brief and simple amendment. If it is adopted, I can vote for the constitutional amendment. If it is not adopted, I shall be compelled to vote against it. If the laws of our States requiring men to contribute to the support of the children they beget, whether legitimate or illegitimate, are to be nullified by the proposed amendment, it should be known not as the women's lib amendment but as the men's lib amendment for an amendment which does not clearly permit States by their laws to make men fulfill their responsibilities relieves men and takes away the rights of women.

But, even worse, it takes away the rights of small, infant children. No one in his senses could look forward to a generation in which small children would be placed in foster homes or in institutions because we have written into the Constitution an amendment that makes it impossible for the mother to receive contributions from the father of her children in order that she can be with them and they may have the benefit of a mother's love and care.

Mr. President, this amendment is so simple and yet so necessary and merely provides that—

This article shall not impair the validity, however, of any laws of the United States or any State which impose upon fathers responsibility for the support of their children.

Mr. President, the Senator from New Hampshire feels strongly on this because he served for 9 years as a county prosecuting attorney. It is largely a rural county. The women in that county were not the kind of women who cry out for this amendment and whom it is supposed to benefit. They were mostly like my own mother—country housewives and mothers who knew from time to time the pinch of poverty. They were not the socially elite, the highly educated, or the politically active.

Mr. President, in the 9 years I served as county attorney, it seemed to me that I spent 25 percent of my time trying to make the men who had deserted their wives with four or five small children, contribute to the support of those children.

That is why, Mr. President, I cannot vote for this proposed constitutional amendment unless it is safeguarded by the amendment now offered to it. Mr. President, I am now glad to yield to my good friend from Wyoming.

Mr. HANSEN. Mr. President, I thank my distinguished colleague from New Hampshire for yielding to me at this time.

Mr. President, what the Senator from New Hampshire is saying is most important. The Finance Committee, of which I am a member, has been holding hearings on H.R. 1. We have heard testimony from individuals, including county prosecuting attorneys testifying to the effect that if they were able to go across State lines, if they had the support of State departments of public welfare, and the support of the Department of Health, Education, and Welfare, in the opinion of one county attorney from the State of Arkansas who estimated that he could reduce the burden of welfare brought about by aid to families with dependent children by as much as 20 percent.

I shall certainly support the pending amendment. It seems ridiculous to me that we should pass a constitutional amendment which wipes out and obliterates all distinctions between the sexes. And I say that as one Senator who has cosponsored the amendment and as one who has told the people of the State of Wyoming that I would support the amendment. However, that was before I listened to some of the more learned Members of the Senate who had delved more deeply than I had at that time into the ramifications of the amendment.

This is an amendment which should be adopted if we are concerned about the rights of those on welfare, if we are concerned about the breaking up of families, and if we are concerned about the fathers who do not seek to fulfill their responsibility but pull out and leave their wives and their families unattended.

I appreciate very much the very important observations made by my good friend, the Senator from New Hampshire. I shall support the amendment.

Mr. COTTON. Mr. President, I thank the Senator from Wyoming. I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOPER. Mr. President, I, too, urge the Senate to support the pending amendment. I speak as one who served as county judge and as circuit judge for 9 years.

The problem arises from two situations. The problem arises from legitimate children born in wedlock where, many times, there is a divorce or separation and a judgment for alimony and child support.

I have seen again and again where the father would fail to meet the orders of the court and would be haled into court, cited for contempt, and placed in jail for a time. Then he would finally be released upon his agreement to resume the payment to his infant children. After that time, he would again fail to keep those promises.

Many times a father moves into another State where our State law could not reach the father because usually the Governors of other States would not permit extradition in such cases.

The situation also arises in the case of illegitimate children, in which the man is charged with being the father of the child and is brought into court. The case is tried, and the jury determines that the man is the father of the child. The court orders that he make payments for the

maintenance of that child. As I recall, that would be until the age of 18 years.

It is against the impulse of a man to do this unless he is an honorable man. In most of these cases the burden would fall upon the mother and eventually upon the State, as many of the mothers in most cases would not be able to maintain the child.

It is a serious question. I believe that there are thousands—perhaps hundreds of thousands—of children in our country today who are in this situation. I noticed in the newspaper the other day that in the District of Columbia it is believed that this year 50 percent of all children born in the District of Columbia would be illegitimate. As I have just noted, most of the times there is not the slightest responsibility on the part of the father to provide for the child.

Mr. PASTORE. Mr. President, will the Senator from New Hampshire yield for a question?

Mr. COTTON. I yield to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, will the Senator point out—because I am very interested in the dialog that has transpired on the floor—wherein the equal rights amendment without this particular amendment would absolve the fathers of children from the responsibility to support those children. Where does the Senator get that? It is common law that, if one is decreed to be the father in the case of an illegitimate child, he contribute to the support of that child. There is nothing in the equal rights amendment that denies the right to impose responsibility upon that parent.

I did not think that the equal rights amendment has anything at all to do with the matter at hand.

Mr. COTTON. Mr. President, I believe there is grave danger that, if the amendment in its present form becomes a part of the Constitution, courts would be compelled to impose exactly the same obligations for support of minor children upon the mother and the father. If the father leaves the jurisdiction, as is often the case, the whole obligation would fall upon the mother, for she is accessible many times when the father is not.

This would serve to obliterate the family concept that has always been the cornerstone of our society—that the father is principally the breadwinner and the mother provides the loving care so necessary to infants and young children. Mr. President, I am not so much worried about the strain put upon public welfare referred to by the distinguished Senator from Wyoming, but I am concerned that mothers should be able to be at home and that children attain a certain age because there is a period to my mind from which the children will never recover and their entire lives may be affected by the lack of constant care and supervision of a mother who loves the child.

Mr. PASTORE. Is the Senator actually saying, should the equal rights amendment pass without this particular amendment, that where a mother goes before a court for an order for child support, the court would be obligated to say, "You go out and get a job and support the

child because the Constitution says that it is your responsibility as much as your husband's responsibility?" Is that what the Senator is saying?

Mr. COTTON. That is almost what I am saying, but not quite. I am saying that the court would be obligated to make an order that the mother share in that support, because they would have to be treated exactly alike. There is also grave danger that it will be held that they would have to be treated exactly alike in any order that would issue. The mother would have to pay half and the father would have to pay half of the support.

Mr. PASTORE. Mr. President, I am interested in hearing the position of the opposition to the amendment.

Mr. COTTON. Before I surrender the floor, I wish to utter some final words. It is because of my own vivid experience during 9 years and the evidence I had of the disposition of men to beget children and then walk out on their responsibilities that I see danger in a constitutional amendment that does not make it clear that this is a reservation. Perhaps the amendment is safe without the adoption of this provision. There are distinguished lawyers in this body who appear to think so, but there are also many legal authorities of the highest repute that have indicated their fear that a bald, all-encompassing constitutional amendment would strike down the power of the States to place the responsibility of financial support of young children upon the father.

I hope that the Senator from Rhode Island is correct in his interpretation, but if he should be wrong and the present proposed language is not added, the results would be tragic.

I cannot bear to visualize my country in a situation where children bereft of a father's support and a mother's care grow up in day care centers or institutions. I fear that more than anything in the world, and I cannot bring myself to vote for a constitutional amendment that for lack of safeguarding language might bring this to pass.

Mr. President, I yield the floor.

Mr. PASTORE. Mr. President, I do not want my position to be misunderstood. I was Governor of my State before I came to the Senate 22 years ago. No one worked harder to clear up the social welfare rolls than I did. I had the director of public welfare in my office every other day to make sure that every father was made responsible for supporting his children. I did not care where the father was. I said, "Go and get him, even if it costs twice as much as it would to support the child, because we have to set an example."

I am afraid that the Senator is reading something into this amendment that is not the case. That is what disturbs me.

Mr. ERVIN and Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. ERVIN. Mr. President, I am sorry that the distinguished Senator from Rhode Island was not in the Chamber this morning when I read into the record the article from the Yale Law Journal

for April 1971. This article was written by a constitutional scholar, Prof. Thomas Emerson, of the Yale Law School, and by three highly educated young lady lawyers.

It states specifically that under the laws in all the States the husbands are primarily liable for the support of their wives and children. It stated expressly that where the State law imposed on the husband primary responsibility for support of the child that that law would be unconstitutional under the equal rights amendment because it makes a legal distinction between the legal responsibility of the husband and the wife. That is an inescapable conclusion.

Why in the world they want to rob little children of the right that they be primarily supported by their fathers is something the Senator from North Carolina is incapable of conceiving.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. PASTORE. I am looking now at the report filed by the committee, page 17. I guess this amendment came up in committee. I assume so.

Mr. ERVIN. I do not recall.

Mr. PASTORE. At any rate the report of the committee states that the report of the Association of the Bar of the City of New York accurately describes the amendment's effect in this area.

The Amendment would bar a state from imposing a greater liability on one spouse than on the other merely because of sex. It is clear that the Amendment would not require both a husband and wife to contribute identical amounts of money to a marriage. The support obligation of each spouse would be defined in functional terms based, for example, on each spouse's earning power, current resources and nonmonetary contributions to the family welfare.

Thus, if spouses have equal resources and earning capacities, each would be equally liable for the support of the other—or in practical effect, neither would be required to support the other. On the other hand where one spouse is the primary wage earner and the other runs the home, the wage earner would have a duty to support the spouse who stays at home in compensation for the performance of her or his duties.

The Senator from North Carolina says that this gentleman from Yale disputes this?

Mr. ERVIN. Yes. He said that the child support sections of criminal non-support laws could not be sustained where only the male is liable for support.

That is exactly what the laws of all 50 States of this Union do and if the equal rights amendment is passed without this amendment it will invalidate the laws of 47 States which place primary obligation on the father.

Mr. PASTORE. It was the impression of the Senator from Rhode Island that the primary responsibility of a father to support his family is common law. It is common law and it is codified. I understand that, and I agree with the Senator from North Carolina.

Mr. ERVIN. The Senator is mistaken. There is no obligation at common law for the father to support the child. All of the obligation for the father to support the child is statutory.

Mr. BAYH. The Senator from Indiana

wishes to interject one brief observation that may or may not be accurate. There is a subject under discussion here in which there is legitimate difference of opinion. The Senator from North Carolina and the Senator from New Hampshire have one position. I certainly feel they have a right to have that position but so far the contrary position has not been expressed at all. With respect to my friend from Rhode Island I do not think he will get my position expressed by asking questions of the Senator from North Carolina because my friend from North Carolina feels very strongly on the other side.

Mr. ERVIN. Not only the Senator from North Carolina says this, but some of our outstanding legal scholars say the same thing: Prof. Roscoe Pound, Prof. Paul Freund of Harvard Law School and not only them but most knowledgeable supporters of the equal rights amendment, Professor Emerson, of Yale Law School and these three young ladies agree with me.

Mr. PASTORE. Mr. President, in connection with what was just said by the manager of the bill, I want him to understand that while he is going to present his case, and I am going to stay to listen, I have every perfect right to ask the questions I have been asking. I am the one who is going to be voting on the question. I do not care who manages the bill or who sponsors an amendment, I am going to vote on the question. I am going to hear both sides, and the idea that we are not going to get to your side until the Senator from North Carolina sits down, he is going to sit down after the Senator from Rhode Island asks him the questions.

Mr. BAYH. I hope the Senator from Rhode Island will reread the RECORD. There was no inference that he was doing anything short of his rights, by fact or by inference. I would be the last one to deny the Senator the right to ask anybody he wants to ask questions.

Mr. PASTORE. I suggest to the Senator from Indiana that he read the RECORD as well. He said we are not going to get to the other side of the coin until the Senator from North Carolina sits down, and he cannot sit down until you stop asking questions.

If you want to tone it down I will accept your apology.

Mr. BAYH. I did not say that, but if the Senator from Rhode Island wants an apology, he has it.

Mr. PASTORE. Thank you very much.

Mr. ERVIN. Mr. President, the AFL-CIO Executive Council adopted a report on this subject.

That report expressly states:

The proposed equal rights amendment would render all protective labor laws for women workers unconstitutional, as well as any other laws treating the sexes differently. Such laws, for example, include marriage laws which place primary responsibility for family support on husbands and fathers.

Mr. COOK. Mr. President, will the Senator yield me 5 minutes?

Mr. BAYH. May the Senator from Indiana have a chance to express himself, inasmuch as we had a little dialog that I think led to a little misunderstanding of what the Senator from Indiana

was trying to say and what the Senator from Indiana did in fact say?

I agree that every Member of this body should be concerned about and study what impact, if any, this amendment will have on the responsibility imposed on parents and the kind of tender, loving care that is provided for their children.

Although I know there is a real difference of opinion on this matter, I think the strongest case can be made to support my position that the well-intentioned and sincere concerns expressed by the Senator from New Hampshire and the Senator from North Carolina are not well founded. The Senator from Indiana suggests that some of those who have been pushing hardest for this amendment agree with his interpretation.

I do not know how you can judge depth of conviction. But there are not too many people around who have been pushing harder for this particular amendment than the Senator from Indiana. I do not think that, because a few people who might be categorized as supporting the equal rights amendment might share the belief that this would lead to totally absolving husbands of any responsibility, that necessarily is the fact.

Let me suggest that I think we are talking about two things, and I think it is important to recognize that. First, we are talking about illegitimacy. I think this was very accurately stated by the Senator from Rhode Island. He nailed it to the wall. We are talking about illegitimate children and we are talking about putative fathers. We cannot do anything about that by passing or rejecting the equal rights amendment.

The fact is that there are a large number of illegitimate children, which should be recognized. I wish we could say we could pass a joint resolution or a constitutional amendment or a law that would say we are not going to have any more illegitimate children. But we are. We are going to have more, with or without this amendment.

Mr. PASTORE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. PASTORE. I realize that this has nothing to do with putative fathers and illegitimate children. I realize that. We are talking about the support of these children.

Let us assume that a woman does have a child by a man, and each of them earns \$50 a week. What is the purport of that without this particular amendment? Do they each have to contribute an equal amount to the support of that child?

Mr. BAYH. The court would take into consideration the capacity of each to support the child and would so decide.

Mr. PASTORE. And each one would make a contribution to the support of the child?

Mr. BAYH. Depending on their ability to contribute that support.

Mr. PASTORE. Whereas if there is a State law that says the responsibility is primarily that of the father, then, of course, we are changing the statute through this amendment.

Mr. BAYH. Primarily of the father, yes, if not solely of the father.

Mr. PASTORE. Let us assume there was a law which provided it is the obli-

gation of the father to support the children. Let us assume there is such a State law. This particular equal rights amendment, without the Ervin amendment, would change that law?

Mr. BAYH. Exactly.

Mr. PASTORE. That is all I want to know.

Mr. BAYH. It would let each case be decided on its own merits, and not on the irrelevant basis of sex.

Let me quote from what the bar of the city of New York has said about the obligation to support children. It said:

The support obligation of each spouse would be defined in functional terms, depending on each spouse's earning capacity, current resources, nonmonetary contributions to the family welfare.

Interestingly enough, there was a case stated in yesterday's Washington Post, which I have been trying to run down, relative to alimony and child support, in which the court refused to strike down an agreement that was entered into earlier which gave to the woman the primary support of the children. The particular circumstances involved were that the woman was a doctor, earning \$42,000 a year, and the man was a college professor, earning \$18,000 a year, and the judge indicated that the woman, who made twice as much as the man, ought to contribute twice as much to the well-being of the children.

I want to suggest to those who think this is going to change the whole equation that I do not think it is. Most fathers in this country are still going to have the primary responsibility of supporting the raising of their children, not because they are men, not because they are fathers, but because most fathers are the primary wage earners. They are the ones who, if there is a dissolution of the family unit, are still going to have the earning power on the marketplace. The mothers are not.

It is the intention that this amendment would continue to impose the obligation on that spouse, mother or father, man or woman, who has the greatest capacity to provide for the children—nothing more, nothing less.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, I want to associate myself with the remarks of the Senator from Indiana, and then I would like the Senator from Rhode Island to listen to how well off a woman is now, married and with children, and not separated, not divorced.

I might say to the Members of the Senate that when we started this debate, on the first day of it, I put a long statement into the RECORD. One of the sections of that statement was entitled "The Equal Rights Amendment and Alimony and Child Support Laws."

I would like Senators to know what great shape a woman is in now who is married and has children, and read to them the best and one of the few cases in the United States that we have had on the subject of a wife who tries to get

adequate support from her husband, when there is no separation and there is no support. I read from the case of McGuire against McGuire, a case in Nebraska:

This was a Nebraska case involving the wife of a well-to-do farmer. During her marriage of 34 years, the plaintiff testified she had been a "dutiful and obedient wife" who had "worked in the fields, did outside chores, cooked and attended to her household duties . . . raised as high as 300 chickens, sold poultry and eggs, and used the money to buy clothing, things she wanted, and for groceries." Her husband did not tolerate any charge accounts. He would give her only small amounts of money and for the last three of four years had not given her any money nor provided her with clothing except a coat a few years previous. The house had no bathroom, bathing facilities or inside toilet and kitchen sink. Water was secured from a well. The furnace had not been in good working order for 5 or 6 years. The furniture was old, and the defendant was driving a 1929 Ford equipped with a heater which did not operate.

Let me emphasize, there was no divorce, no separation; this is just the case of a wife seeking adequate support and maintenance:

The District Court had required the husband to pay for certain items in the nature of improvements and repairs to the house and for furniture and appliances for the household in the amount of several thousand dollars. They had ordered the defendant to purchase a new automobile with an effective heater, required that his wife be entitled to pledge the credit of the defendant for "necessaries of life," and awarded a personal allowance in the amount of \$50 a month.

The Supreme Court of Nebraska overturned the ruling, stating:

" . . . to maintain an action such as the one at bar, the parties must be separated or living apart from each other.

"The living standards of a family are a matter of concern to the household, and not for the courts to determine, even though the husband's attitude toward his wife, according to his wealth and circumstances, leaves little to be said in his behalf. As long as the home is maintained and the parties are living as husband and wife it may be said that the husband is legally supporting his wife and the purpose of the marriage relation is being carried out. Public policy requires such a holding, it appears that the plaintiff is not devoid of money in her own right. She has a fair-sized bank account and is entitled to use the rent from the 80 acres of land left by her first husband, if she chooses . . ."

That is the shape she is in now, I say to the Senator from Rhode Island. That is the shape she is in without a divorce and without a separation. If she has a husband who does not want to spend a dime on her, that is tough, says the court in effect. If he does not want to spend a dime on the children, that is tough. If he does not want to fix the furnace, that is tough. If he does not want to give her a bathroom, that is tough.

I can only say to the Senator—and unfortunately the Senator from New Hampshire is not here at the moment—if he weeps for children when their fathers leave, and he will only vote for this if the father has left and he is compelled to pay by reason of a separation or a divorce, what is he going to do for

the wife who has a husband who will not spend a nickel on her or the children?

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. COOK. I yield.

Mr. PASTORE. Will the Senator from Kentucky please tell me how the equal rights amendment will cure that Nebraska case?

Mr. COOK. Yes, it could.

Mr. PASTORE. Tell me how.

Mr. COOK. I think it would give an entirely different interpretation to the marriage situation. It would give an entirely different interpretation relative to the constitutional right of a male and the constitutional right of a female.

Mr. PASTORE. What has that got to do with giving her support? Suppose the husband says, "I just won't pay"? Then where are you? You cannot eat the Constitution.

Mr. COOK. I think at least we could carry it out within that confined situation where people are not going to get a divorce.

Mr. PASTORE. I want the Senator to understand that I am going to vote for the equal rights amendment, whether it contains any amendment or not, but I am a little concerned about some of the things said by the Senator from New Hampshire. I am concerned that this is not going to be an escape hatch for people who have the responsibility to support their children.

Mr. COOK. I do not think it is at all. Let me state what I think is the easiest answer: I think there will not be a distinction simply by reason of sex, but I think that has nothing to do with the distinction every State legislature can make by law, by reason of financial responsibility to support. We now impose one degree of recognition and distinction upon the father, and say we do it because he is the breadwinner. I do not think we make any distinction as to his ability to pay. His assumed ability to support today is because he is the wage earner, and that is why, in the past, they have used the word "father," because he was the wage earner. Is the Senator telling me we will have fewer on welfare than there are now? Is he saying that because the father is gone and we cannot find him, this amendment is going to change that? Not at all. But we have shifted the emphasis to where it ought to be, to the ability to support rather than to an image.

That is all I say to the Senator. I think it is very clear, and I do not think there can be any great argument about it. Is this constitutional amendment, if passed, going to say to a man who has the ability to work and the financial ability to support, that he may hide behind this constitutional amendment, if a State statute says that the individual of the family who has the financial ability shall do the supporting, that he is not required to and does not have that obligation? I do not think anyone in this room or any legal expert can say that when we take away the word "father" and take on the new term "financial responsibility to pay" that we have not bridged the gap.

The PRESIDING OFFICER. Will the Senator yield to receive a message from the House of Representatives?

Mr. COOK. I yield the floor.

Mr. BAYH. Mr. President, again I think this is a legitimate concern, but I just reemphasize what I said a moment ago. I read for the Record and the consideration of those present section 230.5 of the Model Penal Code, which I think suggests the way this particular subject would be handled.

Mr. ERVIN. Which is not the law anywhere in the United States.

Mr. BAYH. But it is a well-taken and well-respected document, I think, and it can be taken as a point of reference for what could be and probably would be the law of the land if this amendment were passed.

The section entitled "Persistent Non-support" reads as follows:

A person commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he is legally obliged to provide to a spouse, child, or other dependent.

There is no reason why either spouse should not be responsible for the support of the child, depending on which one has the income and earning capacity. I come back again to the best case I could find, no longer ago than yesterday morning, where a woman making \$42,000 was required to provide greater support for a child than her husband making \$18,000.

In most of the cases in the courts today, in accordance with tradition, it will be the other way around, and what will happen is, it will be found that the man is making \$42,000, and the woman is not making anything in the way of income, but is doing all the work at home and making it possible for the father to go out and pursue his profession.

That is the way it is in most cases today, and no doubt will be tomorrow, and it results in the father being the sole support of the child because he, throughout the marriage relationship, is the one who has developed the capacity to earn and provide the children with maintenance.

Mr. PASTORE. That is the situation now, without the equal rights amendment. But my experience in the courts has been that when the court, in any separation or divorce case, states the amount of alimony to be paid or the amount to be given to the children, he usually takes into account what the financial status of the woman is as well. We do not need an equal rights amendment to the Constitution to do that. That has historically been the case: If the woman makes twice as much as the man, and the man is required to contribute to the support of the children, usually, in assessing the amount, the judge should be able not only to take into account the ability to pay, but also the financial status of the woman. That has always been the case.

I am just wondering if we change that. If we do not change it, we have no trouble. But the argument has been made here that we would, and that is the reason we have conducted this little debate, so we will not have any misunderstanding.

ing that this is going to be an escape hatch for wayward fathers.

Mr. BAYH. Quite the contrary. The Senator from North Carolina seeks to change this by suggesting that this is not the case, and that the whole responsibility ought to rest on the fathers. The Senator from Indiana respectfully dissents from that opinion.

Mr. ERVIN. Well, the Senator from North Carolina regrets that he was unable to make a statement which would enlighten the Senator from Indiana as to his position.

The Senator from North Carolina stated that under the laws of 47 of the 50 States of this Union, the father is primarily responsible for the support of his children, and that there are only three States in the Union which have laws which place an equal obligation to support on the father and the mother.

If the equal rights amendment is passed, the laws of 47 States will immediately be stricken down, and there will be no laws until some subsequent laws are enacted.

Now, under the present system, if a prosecuting attorney bringing a criminal action or a next friend bringing a civil action proceeds against the father for the support of a child, all he has to do is show two things: first, that the defendant is the child's father, and, second, that the defendant has failed to support his child. That is all there is to it. Those are matters which can be litigated very quickly. This is an extremely important advantage over what would happen if the equal rights amendment is passed.

If the equal rights amendment is passed, the father, who is called on by the court, by the prosecuting attorney, or by a next friend to support his child, can say:

I have a defense to this accusation. My wife is a better worker than I am. My wife has more property than I have, and my wife is the one who has to be called upon to support.

I say that this amendment ought to be voted for by every Senator who believes that the Scripture speaks correctly when it says that it is better that a man should have a great millstone tied about his neck and should be drowned in the depths of the sea than to have him wrong a little child.

I am ready to vote.

Mr. BAYH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from

New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting the Senator from South Dakota (Mr. MCGOVERN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. JACKSON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Florida (Mr. CHILES), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Colorado (Mr. DOMINICK) is detained on official business.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 17, nays 72, as follows:

[No. 117 Leg.]

YEAS—17

Bennett	Cotton	Hollings
Buckley	Eastland	Jordan, Idaho
Byrd, Va.	Ervin	Long
Byrd, W. Va.	Fannin	Pastore
Cannon	Goldwater	Stennis
Cooper	Hansen	

NAYS—72

Aiken	Gambrell	Pell
Allen	Gravel	Percy
Allott	Griffin	Proxmire
Anderson	Gurney	Randolph
Baker	Harris	Ribicoff
Bayh	Hart	Roth
Beall	Hatfield	Saxbe
Bellmon	Hruska	Schweiker
Bentsen	Hughes	Scott
Bible	Inouye	Smith
Boggs	Javits	Sparkman
Brock	Jordan, N.C.	Spong
Brooke	Magnuson	Stafford
Burdick	Mansfield	Stevens
Case	Mathias	Stevenson
Church	McGee	Symington
Cook	Metcalf	Taft
Cranston	Miller	Talmadge
Curtis	Mondale	Thurmond
Dole	Montoya	Tower
Eagleton	Moss	Tunney
Ellender	Muskie	Welcker
Fong	Nelson	Williams
Fulbright	Pearson	Young

NOT VOTING—11

Chiles	Jackson	McIntyre
Dominick	Kennedy	Mundt
Hartke	McClellan	Packwood
Humphrey	MCGOVERN	

So Mr. ERVIN's amendment (No. 1069) was rejected.

Mr. BAYH. Mr. President, yesterday the very distinguished Senator from Mississippi (Mr. STENNIS) and I debated the effect of the equal rights amendment. My friend was apparently quite concerned about the effect the amendment would have on police forces in our States and localities. I said then, and I repeat now, that the amendment will require that all governmental action be based not on the irrelevant characteristic of sex, but on relevant characteristics such as intellectual ability and physical strength.

Yesterday's Evening Star contains an article concerning Mrs. Prentiss Strickland, of the District of Columbia, who has become Washington's first full-time policewoman with full line responsibilities. Mrs. Strickland is assigned to the traffic division, is directing traffic near the White House, and is doing so quite successfully.

According to the article, the Washington police force is attempting to increase the number of women on its staff. These women will perform the same jobs and receive the same pay as policemen. Thus, Washington is already moving in the direction that the equal rights amendment will take the rest of the country.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FOR THE FIRST TIME

(By Duncan Spencer)

She drew on the fresh white gloves this morning, adjusted the cap, buckled on her .38, told her husband to get breakfast for their two little children and walked out to direct traffic.

It was the first time for Mrs. Prentiss Strickland, and the first time for any full-time policewoman in Washington. "I don't know how I feel," she said, slightly flattered, slightly embarrassed that the TV crews were there every moment.

Mrs. Strickland, Officer Strickland, of the 3700 block of King Avenue SE., is 25, wears octagonal granny glasses, carries a pack of orange traffic tickets and, for the time being, flashes a wide beautiful smile.

She was at the northeast corner of the White House grounds early with her instructor, a white-haired veteran sergeant, Charles Blackburn. Even during the interviews, Blackburn told her to keep an eye on the traffic—as he put it. "I told her to maneuver so she always had the intersection under observation."

"I've wanted to go to the Traffic Division since I graduated," she explained. "I don't really know why, I just like the idea of being outside." A Park Police officer nearby was heard to say, "Women's lib is eating this up—but when you see 3,000 to 4,000 pounds of cars coming, what can you do?" She didn't hear him.

Officer Strickland's gentle, immaculate debut is part of a Metropolitan Police Department drive to get 110 policewomen in the same jobs as men do on the force. The women get the same pay as the men—\$8,500 to start. In her seven months as a police officer, Mrs. Strickland has been a clerk and has done patrol duty with a male counterpart. She has written one ticket in her career—for parking.

Blackburn took her out to the middle of Pennsylvania Avenue as the flood of cement trucks, buses and cars grew. For a few moments they worked close together, almost like a pair of dancers, practicing their hand motions. Then she was alone—with her whistle shrilling, her white gloves flashing and the cars doing what they were told.

There was only one mishap—there almost had to be—the whistle broke and Blackburn gave her his.

Mr. BAYH. Mr. President, I ask unanimous consent to have printed in the RECORD a statement of the Communications Workers of America entitled "CWA and the Equal Rights Amendment."

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CWA AND THE EQUAL RIGHTS AMENDMENT

The Communications Workers of America is an international union composed of half a million workers, 60 percent of whom are women. In negotiating better wages and benefits for our members, as well as handling their workplace grievances, we pay closest attention to any federal and state legislation which could affect our members' economic and social well-being. With such a

large female membership, we have, of course, examined carefully the proposed Equal Rights Amendment now before the Senate.

The Communications Workers of America has always believed in equality of protection under the laws for all. We have fought on the state and federal level for legislation which would guarantee the rights of workers to equality of opportunity on the job and have worked to improve and extend the coverage of benefits presently available under the law. Our effort has been exerted on behalf of all of our members, regardless of race or sex.

Our extensive efforts in this behalf have made it very apparent to us that certain powerful groups catering to corporate interests work hard at frustrating our attempts to extend meaningful protections and benefits presently available either to men or women as a class under state laws and contracts. Indeed, there exist employers who have actually perverted the uses of some of these existing laws to withhold employment or promotional opportunity to individual workers.

However, where the beneficial aspects of legislation limited to one group had been such that it earned the support of our own members in that favored group, we supported the retention of these laws, as well as efforts to extend them to all workers. We opposed efforts to scratch all these laws in one fell swoop. However, actions taken under Title VII of the 1964 Civil Rights Act have voided many of these laws. We applauded those courts which saw fit to extend to men benefits that were available only to women.

On October 12, 1971, the U.S. House of Representatives passed by a 354 to 23 vote an equal rights for women amendment to the Constitution. This amendment, H.J. Res. 208, states: "Equality rights under the law shall not be denied or abridged by the United States or by any state on account of sex." What is the relationship of this constitutional amendment to the laws with which we are concerned in this discussion? Many fear it will lead to the abolition rather than the extension of beneficial state laws which protect only women, rather than both sexes. The Senate Judiciary Committee refused to incorporate language in the amendment aimed at preserving these laws, so that Senate passage and state ratification of the constitutional amendment could place the fate of this state protective legislation in question.

We went to make clear, however, that even without the incorporation of language specifically addressed to the state protective labor laws, we see the Equal Rights Amendment as a means of asserting not an equal right to be abused, but equality of the right to protection. The Communications Workers of America has always supported the extension of existing protective legislation for women to men. We look upon the Equal Rights Amendment as constitutional guarantee, a national commitment that will aid us in achieving this goal. If the safety and family commitment of women have been recognized as valid concerns in the past, why not today extend the same concern and compassion to men?

Anyone who protests discriminatory treatment does so in hopes of obtaining at least the same privileges as have been enjoyed by the favored class. We reiterate our belief that equal rights and privileges do not mean equality of abuse. Where benefits of employment have been enjoyed by one class of people and not another the employer's duty to remedy the present effects of past discrimination has been made clear by the courts. We ask those state legislatures who will be active in the processes of ratification and reconsideration of state statutes which apply to only one sex to remember that the mere abolition of truly beneficial laws will meet with fierce opposition by working people.

In closing, we offer that the Equal Rights

Amendment is one more step in a long American history of securing individual liberties. American citizens should have equal access to whatever opportunities their abilities and choice incline them. This right of access should be safeguarded by our Constitution no less when these citizens are women. We enjoin the various state legislatures, however, to observe the dictates of justice, equity and concern for the common good, as well as a growing legal precedent when considering laws that confer benefits for working women and men.

AMENDMENT NO. 1070

Mr. ERVIN. Mr. President, I call up my amendment No. 1070 and ask that it be stated.

The PRESIDING OFFICER (Mr. STEVENSON). The amendment will be stated.

The assistant legislative clerk read the amendment as follows:

At the end of section 1 add the following sentence: "This article shall not impair the validity, however, of any laws of the United States or any State which secure privacy to men or women, or boys or girls."

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. Mr. President, will the distinguished Senator from North Carolina yield for a question?

Mr. ERVIN. I am delighted to yield to the Senator from West Virginia for a question.

Mr. BYRD of West Virginia. Would the distinguished Senator from North Carolina be willing to agree to a unanimous consent agreement cutting the time in half on amendments? In other words, reducing the time from 2 hours to 1 hour, to be equally divided, as in the previous order?

Mr. ERVIN. That will be entirely satisfactory to me.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time on any amendment to the pending measure be limited to one hour to be equally divided and controlled as heretofore agreed upon.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. I thank the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, there are statutes on the Federal statute books and on the statute books of all the States which secure the right of privacy to men and women and to boys and girls.

The statute that illustrates statutes of this character is section No. 95-48 of the General Statutes of North Carolina which provides:

§ 95-48. *Separate toilets required.*—In the interest of public health and in compliance with G. S. 130-160 and 143-138, adequate, well-lighted and ventilated toilet facilities plainly lettered and marked, for each sex shall be provided and maintained in a sanitary condition by all persons and corporations employing both males and females. Such toilet facilities shall be separated by full and substantial walls. (1913, c. 83, s. 1; C. S., s. 6559; 1963, c. 1114, s. 1.)

In addition to that, there are statutes which require separate toilet facilities

for boys and girls in public schools. There are statutes that require separate toilet facilities for men and women in public buildings and in buildings used for the interstate transportation of passengers. In addition to that there are statutes in every State and there are statutes upon the Federal statute books which require that men and women prisoners serving sentences under court order shall be confined in separate cells and, in many cases, in separate prisons.

Virtually, every State in this Union has laws establishing reformatories for boys and girls who transgress the laws of the States. Those laws require that the reformatories for boys and girls be separate.

Then there are many statutes which provide, as in the case of section 148-44 of the General Statutes of North Carolina, that the Department of Prisons shall provide quarters for female prisoners separate from those of male prisoners; and shall provide for separate facilities for youthful offenders, as required by sections 15-210 to 15-215.

The question raised by this amendment is what will be the effect of the Equal Rights amendments on laws which establish privacy of this nature and which require that the sexes be separated in restrooms and reformatories and prisons. I have read what might be called the bible of what some people designate as the women's lib, the Yale Law Journal article which appeared in the issue for April 1971.

Here is what it says, summing up its comments, reading from page 901 to 902:

It is impossible to spell out in advance the precise boundaries that the courts will eventually fix in accommodating the Equal Rights Amendment and the right of privacy. In general it can be said, however, that the privacy concept is applicable primarily in situations which involve disrobing, sleeping, or performing personal bodily functions in the presence of the other sex. The great concern over these matters expressed by opponents of the Equal Rights Amendment seems not only to have been magnified beyond all proportion but to have failed to take into account the impact of the young, but fully recognized, constitutional right of privacy.

It should be added that the scope of the right of privacy in this area of equal rights is dependent upon the current mores of the community. Existing attitudes toward relations between the sexes could change over time—are indeed now changing—and in that event the impact of the right of privacy would change too.

In other words, the opponents of the equal rights amendment say that they cannot spell out in advance the boundaries that the courts will eventually fix in accommodating the equal rights amendment to the right of privacy. They also say that the effect on the amendment of the right of privacy is not only uncertain at present, but that it may fluctuate or change one way or the other in the future.

That is not the opinion of persons who are experts in the field of constitutional law and the interpretation of statutes.

The distinguished Senator from Indiana wrote a letter to Fred Buzhardt, General Counsel of the Defense Department, in which some comment was made on this point. As the Senator from North

Carolina interprets the letter from the General Counsel of the Department of Defense, the General Counsel expressed the opinion that even though in the military it would be possible to arrange separate facilities for men and women while they were at some established posts, he pointed out that under this amendment the men and women would be sent into combat to perform exactly the same service, and after doing this, he pointed out the obvious:

Even if segregation in living quarters at facilities were allowed under the amendment, during combat duty in the field, there are often, in effect, no facilities at all. The privacy for both sexes might be impossible to provide or enforce.

Let us see what the effect of the equal rights amendment on the right of privacy of men and women and boys and girls who are not affiliated with the military is.

Professor Freund, of the Harvard Law School, testified about this matter before the Senate Judiciary Committee in 1970. After stating that the amendment would be absolute, Professor Freund stated that it would follow that the equal rights amendment "would require that there be no segregation of the sexes in prisons, reform schools, public restrooms, and other public facilities."

Prof. Philip Kurland, editor of the Supreme Court Review and professor of law at the University of Chicago Law School, is one of this Nation's greatest constitutional scholars. He testified in response to questions put to him by me at the hearings on the equal rights amendment before the Senate Committee on the Judiciary as follows:

Senator ERVIN. . . . the law which exists in North Carolina and in virtually every other state of the Union which requires separate restrooms for boys and girls in public schools would be nullified, would it not?

Professor KURLAND. That is right, unless the separate but equal doctrine is revived.

Senator ERVIN. And the laws of the states and the regulations of the Federal government which require separate restrooms for men and women in public buildings would also be nullified, would it not?

Professor KURLAND. My answer would be the same.

Many women are compelled by necessity rather than by choice to work in industrial plants. Under the laws of virtually every State in the Union, industrial plants and other facilities are required to provide separate restrooms and separate dressing rooms for women in instances where those men are required to change their wearing apparel.

Yesterday I placed in the Record and read to the Senate a statement made by representatives of most of the working women of America who belong to the union, in opposition to the equal rights amendment. In this statement the representatives of these working women gave many reasons why Congress should not submit the equal rights amendment to the States and many reasons why the States should not ratify such amendment if Congress should be foolish enough to submit to them. They gave as one of the reasons that the equal rights amendment would destroy rights cause new problems by destroying laws "that require rest-

rooms and dressing rooms for women workers."

I do not care to elaborate this point. I merely suggest that those Members of the Senate who believe that government should not have the power to segregate men and women and boys and girls in restrooms or to segregate male and female prisoners in institutions of correction and prisons ought to vote against my amendment. But those Senators who believe that the right of privacy of men and women and boys and girls ought to be preserved against obstruction by the equal rights amendment ought to vote for my amendment.

It is clear as the noonday sun in a cloudless sky that the only reason that this Nation has separate restrooms for men and women and boys and girls and separate prisons for men and women prisoners is sex. Consequently, being a distinction based on sex, the equal rights amendment would abolish the power of the Federal Government and the power of the 50 States to require separate facilities of this nature for persons of different sexes.

I am ready to yield back the remainder of my time on the amendment.

Mr. BAYH. Mr. President, inasmuch as this is a very significant point raised by the Senator from North Carolina I think a few words of response are required. The point has been raised, so I feel that I must at least express my very strong contrary views to our distinguished colleague from North Carolina. I think that perhaps the best way and the most efficient way to do this is, first, to read a quotation from Professor Dorsen of the New York University Law School. I think he pretty well describes this matter. Second, I ask unanimous consent to have printed in the Record after the quotation by Professor Dorsen portions of the opinion in the case of *Griswold* against Connecticut.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAYH. Professor Dorsen states:

It is sometimes claimed that an amendment would require all public restrooms to be integrated, along with the sleeping quarters of prisons and other public institutions. This, of course, is nonsense. The Constitution must be read as a whole, and an equal rights amendment would fit into the total constitutional framework. In particular, the right of privacy, recognized by the Supreme Court in the Connecticut birth control case, *Griswold v. Connecticut*, 381 U.S. 479 (1965), must be considered in the present context. While the limits of the right of privacy are as yet undefined, it seems plain that its implications would permit, and might require, separate restrooms for the sexes and separate sleeping quarters in public institutions. We should not readily assume that the proposed constitutional amendment would be pressed unreasonably to a point where other constitutional guarantees would be compromised. Accordingly, we find no serious problem in the "restroom-bedroom" specters raised by opponents of an equal rights amendment.

EXHIBIT 1

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See *Poe v. Ullman*, 367 U.S. 497,

516-522, 81 S.Ct. 1752, 6 L.Ed.2d 989 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourth and Fifth Amendments were described in *Boyd v. United States*, 116 U.S. 616, 630, 6 S.Ct. 524, 532, 29 L.Ed. 746, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."

We recently referred in *Mapp v. Ohio*, 367 U.S. 643, 656, 81 S.Ct. 1684, 1692, 6 L.Ed.2d 1081, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people." See *Beane*. The Constitutional Right to Privacy, 1962 Sup.Ct. Rev. 212; *Griswold*, The Right to be Let Alone, 55 Nw.U.L. Rev. 216 (1960).

We have had many controversies over these penumbral rights of "privacy and repose." See, e.g., *Beard v. City of Alexandria*, 341 U.S. 622, 626, 644, 71 S.Ct. 920, 923, 933, 95 L.Ed. 1233; *Public Utilities Comm. v. Pollak*, 343 U.S. 451, 72 S.Ct. 813, 96 L.Ed. 1068; *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed. 2d 492; *Lanza v. State of New York*, 370 U.S. 139, 82 S.Ct. 1218, 8 L.Ed.2d 384; *Frank v. State of Maryland*, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877; *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U.S. 288, 307, 84 S.Ct. 1302, 1314, 12 L.Ed.2d 325. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

Mr. BAYH. It is unequivocally clear in the report of the Committee on the Judi-

ciary that this is the intention of the Senate. It is equally clear because identical language is in the House report, that this is the intention. The right to privacy will continue to exist and will be fully protected after the equal rights amendment is ratified.

Mr. COOK. Mr. President, this is the amendment my staff in reviewing it affectionately referred to as the "potty amendment."

What I do not understand, if the logic of the Senator from North Carolina is correct, is this. He said if I had all of these constitutional rights up to now as a man, and a woman has not, that I had the right to go into a lady's restroom. But as a matter of fact today if a man goes to a lady's restroom he gets arrested. We do not have that right.

If the theory of the Senator is correct that it is as clear as the sun in a cloudless sky with respect to what we are talking about, it must be a rainy day, such as today, when we cannot see the sun. It is said I have had these rights all along and we are giving equal rights under the Constitution which, in essence, means we have not been doing it up to now.

If I had more rights than the feminine sex, and my rights were equal with my brethren, and equal to the rights of women, then I had the right to utilize both of those facilities, but she only had the right to use one facility. Obviously, this is not the case.

I get the notion that we are being told there is a statute in every State of the Union, and I expect that we could be told, if time had not expired, that all those statutes are going to be eliminated; but, if I had all those rights and I could go to both, I would be arrested if I went to the other. So I think this is, although I hate to use the word, a specious argument. I do not think it can stand the march of legal opinion. It cannot stand up against the Griswold case, because the constitutional right of privacy can be used to sanction separate male and female facilities for activities which involve disrobing, sleeping, and personal bodily functions. It cannot stand the march of logic. I do not think it has anything to do with the argument of constitutionality and that it would do a great injustice to the intelligence of the American people if the amendment were attached to the constitutional amendment, because the equal rights amendment does not prohibit the separation of the sexes where the right of privacy is involved.

I yield back my time.

Mr. ERVIN. Mr. President, if I could recapture some of the time I have yielded back—

Mr. COOK. Mr. President, I have no objection.

Mr. ERVIN. The distinguished Senator from Kentucky may think this is specious, but two of the greatest constitutional lawyers in the United States do not think it is specious. I have read into the Record the testimony of Prof. Paul Freund, of the Harvard Law School, and the testimony of Phil Kurland, professor of law at the University of Chicago Law School. I do not think anything could be more plainly demonstrated than the fact that the equal rights amend-

ment will prohibit separate restrooms for men and women.

We have a law passed that says a certain restroom must be marked as being usable for women and another as being usable for men.

The present law provides that a person of neither sex can use a restroom marked for the other sex. That distinction is the most obvious distinction based on sex. The only reason we have separate restrooms is on account of sex, and the equal rights amendment will render unconstitutional every distinction based on sex and it will clearly render unconstitutional every Federal and State law requiring separate restrooms for the two sexes and every Federal and State law requiring that men and women prisoners be detained in different cells or in different prisons.

Mr. BAYH. Mr. President, I yield back my time.

Mr. ERVIN. Mr. President, I do the same.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. McGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. STAFFORD) is detained on official business.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 11, nays 79, as follows:

[No. 118 Leg.]

YEAS—11

Bennett	Ervin	Long
Byrd, Va.	Fannin	Stennis
Cooper	Hansen	Talmadge
Eastland	Hollings	

NAYS—79

Alken	Brooke	Dominick
Allen	Buckley	Eagleton
Allott	Burdick	Ellender
Anderson	Byrd, W. Va.	Fong
Baker	Cannon	Fulbright
Bayh	Case	Gambrell
Beall	Church	Goldwater
Bellmon	Cook	Gravel
Bentsen	Cotton	Griffin
Bible	Cranston	Gurney
Boggs	Curtis	Harris
Brock	Dole	Hart

Hatfield
Hruska
Hughes
Inouye
Javits
Jordan, N.C.
Jordan, Idaho
Kennedy
Magnuson
Mansfield
Mathias
McGee
Metcalf
Miller
Mondale

Montoya
Moss
Muskie
Nelson
Pastore
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Roth
Saxbe
Schweiker
Scott

Smith
Sparkman
Spong
Stevens
Stevenson
Symington
Taft
Thurmond
Tower
Tunney
Welcker
Williams
Young

NOT VOTING—10

Chiles	McClellan	Packwood
Hartke	McGovern	Stafford
Humphrey	McIntyre	
Jackson	Mundt	

So Mr. ERVIN's amendment (No. 1070) was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 1071

Mr. ERVIN. Mr. President, I call up my amendment No. 1071, and ask for its immediate consideration.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The amendment will be stated.

The legislative clerk read as follows:

At the end of section 1 add the following sentence:

This article shall not impair the validity however of any laws of the United States or any State which make punishable as crimes sexual offenses.

Mr. BAYH. Will the Senator request the yeas and nays?

Mr. ERVIN. Mr. President, I ask for the yeas and nays on this amendment.

The yeas and the nays were ordered.

Mr. ERVIN. Mr. President, virtually every State in this Union has certain criminal statutes which prohibit the use of obscene language to female telephone operators, or prohibit the use of obscene language in the presence of women, or which make it a criminal offense for a man to seduce an innocent and virtuous woman under the promise of marriage, or which make it a crime for a man to have carnal knowledge of an immature girl under the age of consent. These laws will be stricken down by the equal rights amendment.

There is another law which we have known in popular parlance as the Mann White Slavery Act. This law makes it a crime for men to transport women in interstate or foreign commerce for immoral purposes or for the purposes of debauchery or for the purposes of prostitution. This law will also be stricken down as unconstitutional by the equal rights amendment.

I find my views on this subject sustained by the article by Prof. Thomas Emerson and three young lady lawyers which appeared in the Yale Law Journal for April 1971. An article which is supported completely by Congresswoman GRIFFITH who is the primary supporter of the ERA in the House of Representatives. I read from page 954 of that article:

C. Criminal law

The Equal Rights Amendment will not affect most criminal laws because statutory definitions of criminal activity make men and women equally liable for most offenses; that

is, men and women can commit and be punished for most crimes equally. However, in the area of sexual activity the norm changes. Sex differentiation and sex discrimination pervade laws about overt sexual behavior and behavior with sexual overtones, reflecting the confluence of social stereotypes about gender and sexuality. Many of the laws, such as seduction laws, statutory rape laws, and laws prohibiting obscene language in the presence of women, embody a stereotype of women as frail and weak-willed in relation to sexual activity. Others, such as the prostitution and "manifest danger" laws, display a contradictory social stereotype: women who engage in certain kinds of sexual activity are considered more evil and depraved than men who engage in the same conduct. The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather than extend them to men because of the rule of strict construction of penal laws, described above.

This article points out that there are in many States criminal statutes which make the forcible commission of sodomy serious offenses, felonies, punishable by long terms of imprisonment. I read what the article in the Yale Law Journal says about what the equal rights amendment would do to laws of this nature:

Rape laws—

Speaking of forcible rape—

could thus be sustained as a legislative choice to give one part of the body (unique to women) special protection from physical attack. By contrast, the statutes which include penetration "per anum and per os" in the definition of rape, could not justifiably be limited to female victims because no physical characteristic unique to women is being protected by these laws. A court could choose between invalidating these broader rape laws or else limiting them to penetration of a woman's genitals. In the case of such a serious offense, courts would probably choose to retain the central and valid portion of the law and invalidate only the part referring to "penetration per anum and per os."

In other words, the article says that if a man forcibly penetrates the mouth of a woman against her will, that would be stricken down as unconstitutional by the equal rights amendment.

I now read another passage, on pages 957, 958, and 959:

With a few notable exceptions, laws which punish sexual intercourse per se as a constructive assault rest on the premise that the female party is incapable of giving meaningful consent. Best known among these are the statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law, frequently sixteen. Other laws, covering more specific situations, prohibit men from having sexual intercourse with female wards, patients, and students. A related series of laws explicitly prohibit men from obtaining women's consent to sexual intercourse through misrepresentation, deception, or fraud.

These laws suffer from a double defect under the Equal Rights Amendment. First, they single out women for special protection from sexual coercion, even where men in similar circumstances are equally in need of protection; in this sense the laws are "underinclusive."

To be sure, the singling out of women probably reflects sociological reality: in this society, young women, who learn both that marriage is the most important goal for them and that they may pursue it only

passively, are undoubtedly more susceptible than young men to the lures of persons who want to take sexual advantage of them. Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard, and requires such statutes to be framed in terms of the general human need for protection rather than in terms of crude sexual categories.

Second, traditional laws protecting all women of a particular age or status against sexual assault are "overinclusive" to the extent that they punish sexual activity when unwanted penetration of the vagina is not involved. It might be argued that statutory rape laws and other laws which render a woman's consent inoperative should be sustained on the same theory that forcible rape laws are upheld: that the legislature wished to give special protection to young women's genital organs. However, it is unlikely that such claims could withstand close court scrutiny under the unique physical characteristics tests. In particular, a court would be unable to find a close correlation between the activity being regulated (consensual sexual intercourse) and the justifying physical basis (susceptibility of the vagina to unwanted penetration).

Even if it found noncoerced sexual intercourse rarely physically harmful to post-pubescent girls, a court might find that sexual intercourse is physically dangerous to girls who have not reached puberty. Upon finding such a fact situation, the court would conclude that the class of women victims is defined too broadly. If it made such a determination, a court could limit the operation of the statutory rape laws to pre-pubescent children. In the alternative, the court could strike down the law altogether because of its overbreadth and because it fails to base its sex difference upon a unique physical characteristic of women.

If invalidated, some of the laws, such as the seduction laws, which derive from outdated standards of courting and morality, would probably not be resuscitated.

So this passage says the equal rights amendment would render unconstitutional all laws dealing with consensual sexual intercourse by a man with a girl unless the girl was under the age of puberty. In other words, a mature man, wise in the ways of the world, could induce a young girl above the age of puberty and under the age of 16 to have intercourse with him and he would go unwhipped by justice under the equal rights amendment.

Then this article also says that the prostitution laws prohibiting the interstate transportation of women for purposes of prostitution would be stricken down under the equal rights amendment, unless extended to cover prostitution on the part of men.

With reference to the White Slavery Act, I read at page 965, as follows:

As prostitution laws are redefined to cover male as well as female prostitutes, a court faced with a challenge to the Mann Act might also be inclined simply to extend this law to apply to the transportation of men for illicit purposes. Under current conditions, such an extension would not subject a large number of additional people to criminal liability. However, this would disregard the legislative history and body of court decisions interpreting Congressional intent, which have placed great emphasis on the weakness of women. As late as 1960, the

Supreme Court declared: "A primary purpose of the Mann Act was to protect women who are weak from men who are bad." *Denning v. United States*, 247 F. 463, 465. It was in response to shocking revelations of subjugation of women too weak to resist that Congress acted. See H.R. Rep. No. 47, 61st Cong., 2d Sess., pp. 10-11. As the legislative history discloses, the Act reflects the supposition that the women with whom it sought to deal often had no independent will of their own, and embodies, in effect, the view that they must be protected against themselves.

Given this background, a court might feel that extending the law to cover men would be expanding criminal liability further than Congress intended. Here, as with other criminal laws, a court would probably resolve doubts about congressional intent by striking down the law.

I digress to remark that the courts are not empowered to change the language of congressional enactments. They could not possibly change the meaning of the Mann White Slavery Act by substituting the word "men" where it talks about women being victims of the offense. So I concur in the last remark which the authors of this article make, that the court would probably resolve doubts about congressional intent by striking down the law.

Mr. President, I ask unanimous consent to have printed in the RECORD the excerpt in the article from the Yale Law Journal dealing with criminal law.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT FROM YALE LAW JOURNAL

C. CRIMINAL LAW

The Equal Rights Amendment will not affect most criminal laws because statutory definitions of criminal activity make men and women equally liable for most offenses; that is, men and women can commit and be punished for most crimes equally.²⁰⁰ However, in the area of sexual activity the norm changes. Sex differentiation and sex discrimination pervade laws about overt sexual behavior and behavior with sexual overtones, reflecting the confluence of social stereotypes about gender and sexuality.²⁰¹ Many of the laws, such as seduction laws, statutory rape laws, and laws prohibiting obscene language in the presence of women, embody a stereotype of women as frail and weak-willed in relation to sexual activity. Others, such as the prostitution and "manifest danger" laws, display a contradictory social stereotype: women who engage in certain kinds of sexual activity are considered more evil and depraved than men who engage in the same conduct. The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather than extend them to men because of the rule of strict construction of penal laws, described above.²⁰² Legislatures, of course, would be able to extend or re-enact any laws about sex offenses to apply equally to men and to women. A few types of criminal statutes, most notably rape laws, may be justified as deriving their sex bias from physical realities. Here the courts would closely scrutinize the laws to determine whether they fall within the scope of the exception for unique physical characteristics.

1. SEXUAL ASSAULTS

Rape laws undoubtedly raise one of the most difficult problems under the Equal Rights Amendment because they deal with such a serious offense and because, though

Footnotes at end of article.

apparently simple, they involve two very different kinds of sex distinction. As most commonly defined in the laws of the states, as well as in the Model Penal Code, rape is the forcing of sexual intercourse by a man on a woman, without her consent.²⁰³ This definition involves two kinds of sex differentiation: only a man can be found guilty as a perpetrator of rape, and only a woman can be the victim of rape.²⁰⁴ These distinctions are usually not made explicit in the language of the statutes, but their interpretation is central to the treatment of rape laws under the Equal Rights Amendment.

Insofar as rape is defined as penetration into the vagina by the penis, courts could uphold forcible rape laws which limit liability to men as based on a unique physical characteristic of men.²⁰⁵ Laws which define rape as forced sexual intercourse could also be sustained if a court defined sexual intercourse as an act done only by a man and a woman together, and if the statute clearly and appropriately defined women as the sole victims of rape.²⁰⁶ Using the criteria described in Part III for determining whether a law bears the necessary close relationship could conclude that, on balance, the law to a unique physical characteristic,²⁰⁷ a court should be sustained. Among other things, the court might find that rape is an extremely traumatic event for the victim; that most men are capable of penetration, and therefore, rape; that a major proportion of sexual assaults consist of sexual intercourse forced by men; that penetration by a man's penis carries with it the possibility of unwanted pregnancy for the victim and forcible penetration carries high danger to injury to the victim; that a criminal penalty is an appropriate way of deterring rape; and that, accompanied by procedural and substantive rights, the law is sufficiently narrow and specific in its scope to be upheld.

Similarly, insofar as a court could find that the rape laws are intended to give special protection from assault to women's vaginas, it could sustain the laws even though their protection is limited to women. A court would conduct an inquiry analogous to that described above for determining whether, under the unique physical characteristics tests, the rape laws could properly be limited to female victims. All or nearly all women's genitals differ from all or nearly all men's genitals in that they can be penetrated in an act of sexual assault against the victim's will. Rape laws could thus be sustained as a legislative choice to give one part of the body (unique to women) special protection from physical attack. By contrast, the statutes which include penetration "per anum and per os" in the definition of rape, could not justifiably be limited to female victims because no physical characteristic unique to women is being protected by these laws. A court could choose between invalidating these broader rape laws or else limiting them to penetration of a woman's genitals. In the case of such a serious offense, courts would probably choose to retain the central and valid portion of the law and invalidate only the part referring to "penetration per anum and per os." Alternatively, the legislature could extend the laws to cover the designated assaults on all persons, regardless of sex.

Rape is only one of a number of nonconsensual sexual acts which are penalized throughout the United States.²⁰⁸ Laws governing such offenses are based on two related sets of concerns. The first is that unwanted sexual contact may be imposed on a person in ways ranging from physical force and threats to more subtle coercion in the form of deception and abuse of positions of trust and authority. The second range of concerns is that particular groups in the population may be especially susceptible to such sexual coercion. By merging these two aspects of the

problem of sexual assault, traditional laws provide highly uneven and irrational coverage permeated by sex discrimination.

With a few notable exceptions, laws which punish sexual intercourse *per se* as a constructive assault rest on the premise that the female party is incapable of giving meaningful consent.²⁰⁹ Best known among these are the statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law, frequently sixteen.²¹⁰ Other laws, covering more specific situations, prohibit men from having sexual intercourse with female wards, patients, and students.²¹¹ A related series of laws explicitly prohibit men from obtaining women's consent to sexual intercourse through misrepresentation, deception, or fraud.²¹²

These laws suffer from a double defect under the Equal Rights Amendment. First, they single out women for special protection from sexual coercion, even where men in similar circumstances are equally in need of protection; in this sense the laws are "underinclusive."²¹³ To be sure, the singling out of women probably reflects sociological reality: in this society, young women, who learn both that marriage is the most important goal for them and that they may pursue it only passively, are undoubtedly more susceptible than young men to the lures of persons who want to take sexual advantage of them. Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard, and requires such statutes to be framed in terms of the general human need for protection rather than in terms of crude sexual categories.

Second, traditional laws protecting all women of a particular age or status against sexual assault are "overinclusive" to the extent that they punish sexual activity when unwanted penetration of the vagina is not involved. It might be argued that statutory rape laws and other laws which render a woman's consent inoperative should be sustained on the same theory that forcible rape laws are upheld: that the legislature wished to give special protection to young women's genital organs.²¹⁴ However, it is unlikely that such claims could withstand close court scrutiny under the unique physical characteristics tests. In particular, a court would be unable to find a close correlation between the activity being regulated (consensual sexual intercourse) and the justifying physical basis (susceptibility of the vagina to unwanted penetration).²¹⁵

Even if it found noncoerced sexual intercourse rarely physically harmful to post-pubescent girls, a court might find that sexual intercourse is physically dangerous to girls who have not reached puberty. Upon finding such a fact situation, the court would conclude that the class of women victims is defined too broadly. If it made such a determination, a court could limit the operation of the statutory rape laws to prepubescent children. In the alternative, the court could strike down the law altogether because of its overbreadth and because it fails to base its sex difference upon a unique physical characteristic of women.

If invalidated, some of the laws, such as the seduction laws, which derive from outdated standards of courting and morality, would probably not be resuscitated. Upon re-examination, legislatures might decide that the existing kidnap laws or other unlawful restraint laws already penalize any serious offensive deception or decoying, and that further penalties would be duplicative. Legislatures would be free, however, to extend the laws against sexual coercion to protect

men as well as women. This is particularly likely where sexual relations with pre-adolescent children are involved.²¹⁶

A slightly different problem is raised in states which set penalties for sexual activities initiated by women, as well as by men, but where different laws, standards of guilt, and penalties apply depending on whether the actor is a woman or a man. Michigan, for example, prohibits women from engaging in sexual intercourse with boys younger than fifteen.²¹⁷ But the law requires that the defendant actually knew the boy was under fifteen (the statutory rape law does not require actual knowledge of the girl's age), and the penalty is a maximum of five years, as compared with the lifetime maximum for statutory rape.²¹⁸ Aside from the forcible rape laws, whose special coverage can be justified on the basis of physical characteristics unique to men and women, the Equal Rights Amendment would require sexual assault laws to provide equal standards of guilt and penalties for men and women offenders.²¹⁹

Considering the variety of laws regulating nonconsensual sexual activity, ranging from rape to sexual contact, it is surprising to realize that all of them can be reduced to a few basic elements: the touching of or with genitals, by means of force or deception, and, in the case of young people, the touching of genitals by an older person. The current sexual offense laws are highly duplicative, both of one another, and of general penal laws against kidnap, assault, and battery. The great degree of overlap in these laws, as well as the many distinctions without differences, provide a fertile field for confusion; they also encourage overcharging and extreme penalties. Moreover, the particular situations with which many of the laws deal evoke strongly emotional reactions and foster legislative mandates of higher penalties than the actual act usually merits. For instance, rape is singled out from other sexual offenses and classified with murder for the purposes of sentencing. This classification helps neither the accused²²⁰ nor the victim.²²¹ Moreover, it tends to reduce the seriousness of other forms of sexual assault besides actual intercourse, which may well be equally disturbing for the victim.

The Model Penal Code has undertaken to bring together the confusing disparity of sexual offenses into a few categories structured in terms of the nature of the act, the vulnerability of the victim, and the coerciveness of the situation.²²² The Equal Rights Amendment would require legislatures in all states to reformulate at least some of their laws. While legislatures could very simply bring the laws into line with the Amendment by substituting the word "person" every time the words "female," "male," "man" or "woman" appear, hopefully they would be encouraged to re-evaluate, rationalize, and simplify this crazy-quilt area of criminal law.

2. CONSENSUAL SEXUAL RELATIONS

Criminal laws in every state penalize some sexual liaisons, even though both partners are fully responsible for their conduct and engage in the acts voluntarily and privately. As with nonconsensual sexual conduct, legislatures have frequently linked the definition of these crimes to the sex of one or both partners.

Statutes prohibiting sodomy generally sweep in alike men and women, married and unmarried persons, heterosexuals and homosexuals.²²³ As a result, most of these statutes would not violate the Equal Rights Amendment, prohibiting as they do certain acts regardless of the identity of the actor or the circumstances of the act. A few states, however, limit liability under their sodomy statutes to males.²²⁴ Like rape, the definition of sodomy can be limited to penetration by the penis. Where sodomy is defined in this way, such that females are incapable of com-

mitting it, laws restricted to males may be sustained under the Equal Rights Amendment. However, a statute which defined sodomy more broadly, to include all oral-genital contact, would violate the Amendment if it were restricted to males.

A few adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment. Roman law defined adultery as sexual intercourse with another man's wife.²²⁵ Some states reflect this one-sided view by failing to define intercourse between a married man and a single woman as adultery.²²⁶ In Massachusetts and Oregon, an unmarried woman cannot be punished for relations with a married man, although an unmarried man is criminally liable if he participates in an adulterous relationship with a married woman.²²⁷ Discrepancies like these in the liability of men and women derive from social attitudes toward the relative offensiveness of extramarital activity by men and by women. The singling out of married women's extramarital activity harks back to concepts of a married woman as the property of her husband, although common law justifications focused on the fact that a married woman's liaison might produce offspring who would have her husband's name and whom her husband would have the duty to support.²²⁸ However, the core idea in adultery is that extramarital intercourse per se threatens the marriage relationship. If this is the case, a court could not permit a state to set stricter penalties for a woman's extramarital activity than for a man's.

Following the rule of narrow construction of criminal statutes, courts will most likely invalidate sodomy or adultery laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike.²²⁹ This is especially likely since statutes regulating consensual sexual activity are also open to attack under the constitutional right to privacy in intimate sexual matters.²³⁰ However, a legislature intent on retaining criminal penalties for sodomous or adulterous conduct could easily bring the laws into line with the Equal Rights Amendment by extending them to apply equally to men and women.

3. PROSTITUTION

At common law and still today in most parts of the United States, prostitution is, by definition, a crime committed only by women.²³¹ Even statutes neutral on their face turn out to be enforced only against women offenders.²³² Prostitution laws have been the focus of much heated controversy about the proper role of law in regulating moral or sexual behavior, and many people believe prostitution should not be criminalized at all.²³³ But more narrowly, prostitution laws have been attacked as discriminating against women. Two kinds of sex bias are written into the majority of prostitution laws: first, women who sell access to their own sexual conduct are penalized, whereas men who do the same thing are not; and, second, the prostitute, who under current psychosocial conditions is usually a woman, is penalized, whereas the patron, who is usually a man, is not.²³⁴

Courts may be expected to hold that laws which confine liability for prostitution to women only are invalid under the Equal Rights Amendment. There is no unique physical characteristic of women which would justify outlawing prostitution when it is done by women, and not when it is done by men. Earlier beliefs that women are the carriers of venereal disease because of their sex have no scientific basis. Ideas that women who sell access to their bodies are social problems, whereas men who do the same thing are not, derive their only rationality from a social double standard which may not enter into legislative or judicial determinations under the Equal Rights Amendment.

Even in the absence of the Equal Rights Amendment, recent reforms of prostitution laws have extended the coverage to men. Thus, the Model Penal Code refers to a person guilty of prostitution as "he or she."²³⁵ The New York Penal Code contains a section explicitly stating that both men and women may be guilty of prostitution.²³⁶ With the impetus of the Equal Rights Amendment, other state legislatures can be expected to move in this direction.

If prostitution laws were redefined to cover male prostitutes, then the courts would be unlikely to find a per se violation of the Equal Rights Amendment in the fact that prostitution laws penalize the "seller" but not the "buyer." In general, regulating the conduct of the seller and not the buyer is a rational governmental choice, although in the case of prostitution such a choice may not make sense, even in terms of effective deterrence.²³⁷ Nevertheless, prostitution laws which penalize only the seller would be subject to judicial scrutiny as classifications which fall more heavily on one sex than the other.²³⁸ Thus, to sustain its laws, a state would bear a heavy burden of demonstrating the rationality of regulating only the seller and not the buyer in a prostitution transaction. Reformed penal laws have already begun to regulate patrons as well as prostitutes.²³⁹ It is likely, and desirable, that legislatures, in removing the sex bias from their laws, will follow this lead.

Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so it would require invalidation of laws specially designed to protect women from being forced into prostitution. In addition to many state laws of this type, the federal White Slave Traffic Act (Mann Act) prohibits the transportation in interstate "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery or to engage in any other immoral purpose."²⁴⁰

Related sections of the Act also prohibit persuading, inducing, enticing, or coercing a woman to travel in interstate commerce for the above purposes.²⁴¹ Cases interpreting the Mann Act have held that a woman may be found guilty as a principal under the Act; in some circumstances she may even be convicted of agreeing to transport herself in interstate commerce.²⁴² However, it is no crime to transport a man or boy in interstate commerce for the purposes set forth in the statute. Congress could easily bring the Mann Act into conformity with the Equal Rights Amendment by substituting the word "person" for the words "woman or girl" in the statute.

As prostitution laws are redefined to cover male as well as female prostitutes, a court faced with a challenge to the Mann Act might also be inclined simply to extend this law to apply to the transportation of men for illicit purposes. Under current conditions, such an extension would not subject a large number of additional people to criminal liability. However, this would disregard the legislative history and body of court decisions interpreting Congressional intent, which have placed great emphasis on the weakness of women. As late as 1960, the Supreme Court declared:

"A primary purpose of the Mann Act was to protect women who are weak from men who are bad." *Denning v. United States*, 247 F. 403, 465. It was in response to shocking revelations of subjugation of women too weak to resist that Congress acted. See H.R. Rep. No. 47, 61st Cong., 2d Sess., pp. 10-11. As the legislative history discloses, the Act reflects the supposition that the women with whom it sought to deal often had no independent will of their own, and embodies, in effect,

the view that they must be protected against themselves."²⁴³

Given this background, a court might feel that extending the law to cover men would be expanding criminal liability further than Congress intended. Here, as with other criminal laws, a court would probably resolve doubts about congressional intent by striking down the law.

4. INDETERMINATE SENTENCING

In addition to separate substantive law for men and women, some states have special sentencing provisions for women. These laws in effect require or permit judges to place women in a separate correctional status in which the lengths of their sentences are determined not by the judge but by correctional authorities within the limits set by statute. When women are placed in such a status, they may be subjected to longer sentences than those provided for in the substantive statute, thereby creating higher maximum penalties for women than for men convicted of the same crime.

In *United States ex rel. Robinson v. York*²⁴⁴ and *Commonwealth v. Daniel*,²⁴⁵ two indeterminate sentencing laws were successfully attacked under the Fourteenth Amendment as denying women equal protection of the laws.²⁴⁶ However, similar laws remain on the books in a number of states.²⁴⁷ Such laws, if not invalidated under the Fourteenth Amendment, in general, the special laws for sentencing of women are in the form of separate additional sentencing statutes. Thus, if a court invalidated the special law for women, it would simply leave women subject to the standard sentencing laws. This was the result in *Robinson* and *Daniel*.

FOOTNOTES

200. The Equal Rights Amendment would forbid sex discriminatory enforcement just as the Fourteenth Amendment forbids enforcement which discriminates on the basis of race. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). However, such attacks involve very difficult problems of proof and are not discussed here. See, for a discussion of the recent rapid rise in the crime rate of women, and of changing law enforcement attitudes toward women offenders, Roberts, *Crime Rate of Women Up Sharply Over Men's*, N.Y. Times, June 13, 1971, at 1, col. 1.

201. The proportion of all women arrested who are arrested for sex offenses, including forcible rape and prostitution, is nearly four times the proportion of all arrested men. F.B.I., U.S. DEPT. OF JUSTICE, *UNIFORM CRIME REPORTS FOR THE UNITED STATES 124* (1967).

202. See the discussion in Part IV(B), at p. 915 *supra*.

203. See, e.g., MODEL PENAL CODE § 213.1 (Proposed Official Draft, 1962).

204. The language of some rape statutes suggests that either a man or a woman may be guilty of rape. Even these statutes, however, generally preclude the possibility of charging a woman with rape by defining sexual intercourse as the penetration of a man's penis into a woman's vagina, or, in some cases, her mouth or anus. Furthermore, a Yale Law Journal study in 1952 found no reported case in which a woman had been convicted of rape as a principal. See Comment, *Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard*, 62 YALE L.J. 55 n.2 (1952). For the general rule that rape can be committed by a male only, see 75 C.J.S. *Rape* § 6 (1952).

In all states, both by common law and statute, only women can be victims of forcible rape; see 75 C.J.S. *Rape* §§ 1, 2, 7 (1952). Forcible sexual assault on an adult male is not defined as rape. Many states have enacted additional laws penalizing nonconsensual sexual assaults on men, but none of these laws bears the extreme penalties of the standard rape laws. A few states severely penalize sexual relations with children of

both sexes, but force is not an essential element of those statutes; they are discussed at p. 959 *infra*, in conjunction with statutory rape.

205. Statutes which define rape as "penetration" mostly fail, with Victorian delicacy, to specify what instruments of penetration are included. The common law antecedents of the rape statutes, as well as contemporary case law, indicate that courts have limited the application of rape laws to penetration by a man's penis. However, penetration of a woman's vagina may be made by many instruments other than a man's penis, and with equally devastating consequences for the victim's psyche. Whether or not pregnancy has resulted from the rape is immaterial under current laws; similarly, sterility is not a defense for a man accused of rape. Thus a court might conclude there is no rational reason for differentiating such assaults, of which women are as capable as men, and hold the rape laws invalid unless they extend to women assailants as well as men.

206. The MODEL PENAL CODE, § 213.1 (Proposed Official Draft, 1962) adopts this definition of rape.

207. See the discussion in Part III(B), at p. 895 *supra*.

208. A few states still have statutes which extend the concept of "sexual assault" to the use of obscene or insulting language in the presence of a woman. For instance, Alabama penalizes any person who in the presence or hearing of any girl or woman, uses abusive, insulting, or obscene language.

ALA. CODE, tit. 14, § 11 (1958). See also MICH. COMP. LAWS ANN. § 750.337 (1968); ARIZ. REV. STAT. § 13-377 (1956). A variation on the same theme is a Georgia libel law which forbids anyone to utter or circulate "any defamatory words or statements derogatory to the fair fame or reputation for virtue of any virtuous female." GA. CODE ANN. § 26-2104 (1953). Such laws, based on a stereotyped view that women are morally pure, yet morally fragile, rather than on any unique physical characteristic of women which actually distinguishes them from men, would be invalidated under the Equal Rights Amendment.

209. The few statutes which declare young or helpless males incapable of consent are: COLO. REV. STAT. ANN. § 40-2-25(1)(k) (1963) (intercourse with male under 18 solicited by female); ILL. ANN. STAT. ch. 38, §§ 11-4 and 11-5 (Smith-Hurd 1964) (indecent liberties with a child and contributing to the delinquency of a child, regardless of sex); IND. ANN. STAT. § 10-4203 (1956) (intercourse with male over 14 knowing he is epileptic, imbecile, feeble minded or insane); KY. REV. STAT. § 435.100 (1970) (carnal knowledge of male child under 18); MICH. COMP. LAWS ANN. §§ 750.339-340 (1968) (debauching a male under 15); WASH. REV. CODE ANN. § 9-79.020 (1961) (sexual intercourse with male under 18).

210. See, e.g., 44 AM. JUR. RAPE § 17 (1942). Some states make an exception for intercourse with women who are not virgins, e.g., FLA. STAT. § 794.05 (1961).

211. See, e.g., MICH. COMP. LAWS ANN. §§ 750.342, 750.341 (1968) (prohibiting intercourse with female wards and patients in mental institutions); D.C. CODE ENCYCL. ANN. § 22-3002 (1967) (penalizing male teachers who have sexual intercourse with any woman currently their student).

212. Seduction laws penalize men for inducing unmarried women to engage in sexual conduct by a promise, usually of marriage. See, e.g., N.J. STAT. ANN. §§ 2A: 142-1, 142-2 (1969). Michigan, like many other states, makes it a crime for a person to entice a woman under 16 away from her parents or guardian for purposes of prostitution, concubinage, sexual intercourse, or marriage. MICH. COMP. LAWS ANN. § 750.13 (1968).

213. See, e.g., the report of the Carroll County, Maryland, grand jury calling for legislation "to prevent mental and physical harm to unsuspecting, unprepared adolescents by forced, coerced or seduced sexual activity which may warp the development of such children as useful citizens to society." The report was prompted by evidence presented to the grand jury that two women elementary school teachers had seduced boys 11 and 12 years old. The grand jury concluded that the Maryland criminal code provided no statute under which the teachers could be indicted and called for state legislation "giving male juveniles equal protection under the laws." Washington Post, Jan. 2, 1971, at 3, col. 2. The Royal Commission on the Status of Women in Canada has reached a similar conclusion. Its recent Report recommended "that the Criminal Code be amended to extend protection from sexual abuse of all young people, male and female, and protection to everyone from sexual exploitation either by false representation, use of force, threat, or the abuse of authority." REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN IN CANADA ch. 9, par. 42, at 374 (1970).

214. It is true that statutory rape may involve breaking the hymen, but very few states consider the victim's chastity material to the question of guilt. Moreover, statistical reports show that few statutory rape complainants are virgins. See Schiff, *Statistical Features of Rape*, 14 J. FOR. SCI. 102 (1969).

215. The law in most states presumes that a sixteen year old girl can consent to marriage (with her parents' approval), and, by implication, to sexual relations, while an unmarried girl of sixteen is legally presumed to be incapable of giving consent to a single act of sexual intercourse. However, there are no physical differences between the sexual acts involved. As discussed at pp. 938-39 *supra*, the minimum marriage age is not based on a unique physical characteristic of women. Therefore, the statutory rape law, which also deals with consensual sexual relations, cannot be justified as based on such a unique characteristic. There are, of course, social and psychological differences between marital and extramarital sexual relations, and the state may recognize them through sex-neutral legislation about extramarital sexual intercourse involving either young men or young women.

216. Some states already have laws that protect all children, regardless of sex. For example, Illinois has merged its statutory rape law into laws prohibiting indecent liberties with any child or contributing to any child's sexual delinquency. ILL. ANN. STAT. ch. 38, §§ 11-4 (Smith-Hurd Supp. 1971) and ch. 38, §§ 11-5 (Smith-Hurd 1964).

217. MICH. COMP. LAWS ANN. § 750.339 (1968).

218. Compare MICH. COMP. LAWS ANN. § 750.339 with § 750.520 (1968).

219. Where a state has mirror-image statutes which penalize men and women for the same conduct, by the same standards, and with the same penalties, the laws could be upheld under the Equal Rights Amendment. For example, Michigan's identical laws prohibiting acts of "gross indecency" between two men and between two women would not have to be invalidated; a court would not require the formality of rewriting a statute such as this, where in effect, it already covers men and women alike. See MICH. COMP. LAWS ANN. §§ 750.338, 750.338(a) (1968).

220. The Fourth Circuit recently held that Maryland's death penalty for rape was so excessively disproportionate as to violate the Eighth Amendment's guarantee against cruel and usual punishment. *Ralph v. Warden*, 438 F.2d 786 (4th Cir. 1970).

221. Between 1960 and 1967 the number of forcible rapes known to law enforcement officials increased 61 per cent. In contrast,

the proportion of forcible rapes solved by arrest of the offender decreased annually between 1965 and 1967. UNIFORM CRIME REPORTS, *supra* note 201, at 12 13.

In conjunction with the severe penalties for forcible rape, the defense of consent has developed. The existence of the consent defense (which is unique to rape) has the effect of putting the complainant on trial, for she will usually be subjected to a relentless defense examination, in an attempt to impugn her character and suggest that she actually consented to sexual attack. The consent defense and corresponding trial tactics thus have the effect of deterring women from making complaints about rape attacks; the Federal Bureau of Investigation estimates that forcible rape "is probably the most underreported crime by victims to police." UNIFORM CRIME REPORTS, *supra* note 201, at 13. As a result, some women's rights advocates have argued that women would actually be better protected if rape were prosecuted simply as aggravated assault.

222. MODEL PENAL CODE §§ 213.0-06 (Proposed Official Draft, 1962). For instance, the Model Penal Code's crime of "sexual assault" prohibits offensive "touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying sexual desire of either party." MODEL PENAL CODE § 213.4 (Proposed Official Draft, 1962).

223. "Sodomy" is used here, as it is used in many statutes, to include both oral-genital contact and anal intercourse. In some states it also includes mutual masturbation, sexual relations with animals, and sexual contact with dead bodies.

224. See, e.g., 81 C.J.S. *Sodomy* § 1 (1953).

225. M. PROSCOWE, *SEX AND THE LAW*, 146 (1951).

226. In Indiana, adultery is defined as intercourse between a man and a married woman, while intercourse with an unmarried woman is defined as the lesser offense of fornication. *Warner v. State*, 202 Ind. 479, 175 N.E. 601 (1931). A similar discrepancy is apparent in the "unwritten law defense," which survives in some states for men. The unwritten law defense permits a man to argue in complete defense to a homicide prosecution that the man he killed was, at the time of the homicide, in the act of sexual intercourse with his wife; it is, in other words, a license to men to murder in the face of adultery. No state gives women who kill their husbands' lovers a corresponding defense. TEX. PENAL CODE, Art. 1220 (Vernon's 1961); N.M. STAT. ANN. § 40A-2-4 (1953); UTAH CODE ANN. § 76-30-9(4) (1953).

227. Both married men and married women are liable for extramarital sexual intercourse. ORE. REV. STAT. § 167.010 (1969); MASS. GEN. LAWS, ch. 272 § 14 (1932).

228. R. PERKINS, *CRIMINAL LAW* 337 (2d ed. 1969).

229. Cf. *Buchanan v. Batchelor*, 308 F. Supp. 729 (N.D. Tex. 1970) in which a federal court invalidated Texas's entire sodomy law because of its overbreadth in extending to acts between husband and wife. The decision was vacated by the United States Supreme Court *sub nom. Buchanan v. Wade*, 91 S. Ct. 1222 (1971), and remanded for consideration in the light of *Younger v. Harris*, 401 U.S. 37 (1971), and *Samuels v. Mackell*, 401 U.S. 66 (1971).

230. See *Griswold v. Connecticut*, 388 U.S. 479 (1965). At least two states have already repealed their laws against consensual homosexual relations. See ILL. ANN. STAT. ch. 38, §§ 11-2, 11-3 (Smith-Hurd 1964); CONN. GEN. STAT. REV. §§ 53a-65, -75 to -77 (Supp. 1969) (effective Oct. 1, 1971).

231. See "Prostitution," BLACK'S LAW DICTIONARY 1386 (4th ed. 1951); 73 C.J.S. *Prostitution*, § 1 (1951); *Eisner v. Commonwealth*, 375 S.W. 2d 825 (Ky. 1964). But cf. D.C. CODE ENCLY. ANN. § 22-2701 (1967). At least one

state still imposes special punishment on young women who are considered "in manifest danger of falling into habits of vice." No corresponding provisions are made for young men. See CONN. GEN. STAT. ANN. §§ 17-379, 18-65. Connecticut's statutes survived constitutional attack in *State v. Mattiello*, 4 Conn. Cir. 55, 225 A.2d 507 (1967), appeal dismissed, 395 U.S. 209 (1969).

232. S. Harmon, *Attitudes Toward Women in The Criminal Law Process* 5 (1970) (unpublished paper on file at Yale Law School Library.)

233. Compare A. FLEXNER, *PROSTITUTION IN EUROPE* (especially at 11-14) (1914), with REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION [The Wolfenden Report] (1957). If the newly articulated constitutional right to privacy receives expanded interpretation, see discussion in Part III(D) at p. 900 *supra*, all regulation of prostitution, other than public health measures, may be ruled unconstitutional.

234. Men may be punished as entrepreneurs for trafficking in women or keeping a house of ill fame. They are seldom prosecuted for mere patronage of a prostitute. KANOWITZ, *supra* note 2, at 16-17.

235. MODEL PENAL CODE § 251.2 (Proposed Official Draft, 1962).

236. N.Y. PENAL LAW § 230.10 (McKinney 1967).

237. The recidivism rate for prostitution is so high that prostitution has been called "life on the installment plan." Lukas, *City Revising its Prostitution Controls*, N.Y. Times, Aug. 14, 1967, at 1, col. 2. Compare the Soviet Union's success at deterring prostitution by posting publicly the names, addresses and places of employment of the customers of prostitutes. KANOWITZ, *supra* note 2, at 17.

238. In its published statistics, the Federal Bureau of Investigation classifies "commercialized vice" together with prostitution. Even so 30,866 women were arrested for prostitution or commercialized vice as compared with 8,878 men. This figure is particularly striking in light of the fact that the total number of men arrested in 1967 was seven times greater than the total number of women arrested. UNIFORM CRIME REPORTS, *supra* note 201, at 124.

239. See N.Y. PENAL LAW § 230.05 (McKinney 1967); CONN. GEN. STAT. ANN. PENAL CODE § 84, 1969 Public Act No. 828 (effective Oct. 1, 1971). However, New York's law penalizing the patrons of prostitutes has only rarely been enforced. Speech by Elizabeth Schneider, Yale Law School, April 29, 1971.

240. 18 U.S.C. § 2421 (1964).

241. 18 U.S.C. §§ 2422-23 (1964).

242. *United States v. Holte*, 236 U.S. 140 (1915); but cf. *Gebardi v. United States*, 287 U.S. 112 (1937).

243. *Wyatt v. United States*, 362 U.S. 525, 530 (1960).

244. 281 F. Supp. 8 (D. Conn. 1968).

245. 430 Pa. 642, 243 A.2d 400 (1968).

246. In *Robinson*, the court ordered the petitioner released because she had already served the statutory maximum sentence for breach of the peace and resisting arrest. The court stated that to hold her for the full three years permitted under the sentencing law for women offenders would have denied her the equal protection of the laws. In *Daniel*, appellants' cases were sent back for resentencing because the court held that Pennsylvania's law requiring judges to impose the statutory maximum on all women sentenced to the State Correctional Institution at Muncy violated the Equal Protection Clause.

247. *E.g.*, ME. REV. STAT. ANN., tit. 34, § 802 (men); §§ 853-54 (women) (Supp. 1970). Disparities also exist in the juvenile laws of several states. For instance, in New York a court can order incorrigible, ungovernable, or habitually disobedient women to be held in custody until they are 20, if they are adjudged "persons in need of supervision"

(PINS); whereas, boys can be held under the PINS statute only until age 18. Since most of the commitments under the PINS law stem from activity which could not result in criminal conviction, the law imposes on women two years of extra liability for non-criminal activity. N.Y. FAMILY COURT ACT, §§ 712, 756 (McKinney 1963).

Mr. ERVIN. Mr. President, this article makes it plain that the equal rights amendment will render unconstitutional State statutes which make it a crime for a man to seduce an innocent, virtuous woman under the promise of marriage, State statutes which make it a crime for a man to have carnal knowledge of an immature girl above the age of puberty and under the age of 16, and the White Slavery Act which makes it a crime for a man to transport women in interstate or foreign commerce for immoral purposes or for purposes of debauchery and prostitution.

Mr. President, my amendment is merely designed to make it certain that the equal rights amendment will not impair the validity of any laws of the United States or of any State which makes sex offenses punishable as a crime.

Mr. President, I sincerely trust that the Senate will adopt this amendment.

Mr. BAYH. Mr. President, I yield myself such time as I may need. I shall be brief, inasmuch as the distinguished Senator from North Carolina and I had a rather detailed discussion about this matter on yesterday, and anyone who cares to examine it in further detail will find my remarks in yesterday's RECORD.

I certainly think that the Senator from North Carolina has made a significant contribution to this debate by bringing this issue into focus.

None of us who support the equal rights amendment—perhaps I should not say none, but at least, including myself, I should say most of us who are supporting the equal rights amendment—have no desire at all that it have the effect attributed to it by the Senator from North Carolina.

Perhaps the best place to start in this brief rebuttal would be to read from the committee report which states as a general rule particularly relative to the question of rape and statutory rape:

The Amendment will not invalidate laws which punish rape, for such laws are designed to protect women in the way that they are uniformly distinct from men.

None of the items the Senator from North Carolina is concerned about would be stricken by the equal rights amendment. Rather, because of their sexual bias, in the judgment of the Senator from Indiana and the majority of the Judiciary Committee, such laws will be sustained. They will not be stricken down as unconstitutional, because the distinction between the laws as to their application to men and women is not based simply on their sex, but on their unique physical characteristics—their distinct physical differences. Indeed, men and women do have unique physical characteristics and that is why we need unique, distinct and different laws relating to various sex crimes. To determine whether the law is based on unique physical characteristics, the Senator from

Indiana suggests that one must look at both the group protected by the law and the group which might be punished. Again let us use the rape law in question. Rape laws, under this analysis, are perfectly constitutional, for both the groups which is protected; namely, women, and the group which can be punished; namely, men, have unique physical characteristics which are directly related to the crime, to the act for which an individual is punished.

With respect to statutory rape, the same analysis can be drawn. I suggest most respectfully. Only men can physically commit the crime of statutory rape and only women can physically be the victims of the crime.

The PRESIDING OFFICER (Mr. Tower). Who yields time?

Mr. BAYH. Mr. President, I yield back the remainder of my time.

Mr. ERVIN. Mr. President, the Senator from Indiana mentioned the fact that men and women have unique physical characteristics which are distinguishable from each other. That is true. That is exactly what makes the distinction between men and women and makes them members of different sexes. This equal rights amendment is designed to outlaw every law which is based on the distinction of sex. So, it is impossible to maintain the position of my good friend, the Senator from Indiana. The whole equal rights amendment recognizes that men are men and women are women, because they have different unique physical characteristics which divide them into two sexes. And manifestly, a constitutional amendment which says that we cannot have a law based upon distinction between sexes would invalidate any law based upon this distinction.

Mr. President, I am willing to yield back the remainder of my time.

Mr. BAYH. Mr. President, I yield myself a couple of minutes under the bill.

The PRESIDING OFFICER (Mr. Roth). The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, the Senator from Indiana has not contended in debate with the Senator from North Carolina throughout these many hours and many days that men and women did not have distinct characteristics that made them different. It has been quite to the contrary.

There is no way we can pass a constitutional amendment to change this. However, by definition the crime of, let us say, rape, can apply to only one group who are the victims and one group who are the perpetrators of this crime. This is based on the unique physical characteristics of the sexes.

Thus, in the judgment of the Senator from Indiana and, indeed, even in the judgment of the Yale Law Review article which I quote with some reluctance, because of the different interpretations the Senator from North Carolina and I have put upon it, that is one area in which I have agreement with the scholars who wrote that article when they said that rape laws would continue to be valid after ratification of the equal rights amendment.

The PRESIDING OFFICER. The ques-

tion is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Washington (Mr. JACKSON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT) and the Senator from Kentucky (Mr. COOPER) are detained on official business.

Also, the Senator from Tennessee (Mr. BAKER) is detained on official business.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 17, nays 71, as follows:

[No. 119 Leg.]

YEAS—17

Bennett	Dominick	Hollings
Buckley	Eastland	Long
Byrd, Va.	Ervin	Miller
Byrd, W. Va.	Fannin	Stennis
Cannon	Goldwater	Talmadge
Cotton	Hansen	

NAYS—71

Aiken	Griffin	Pell
Allen	Gurney	Percy
Anderson	Harris	Proxmire
Bayh	Hart	Randolph
Beall	Hatfield	Ribicoff
Bellmon	Hruska	Roth
Bentsen	Hughes	Saxbe
Bible	Inouye	Schweiker
Boggs	Javits	Scott
Brock	Jordan, N.C.	Smith
Brooke	Jordan, Idaho	Sparkman
Burdick	Kennedy	Spong
Case	Magnuson	Stafford
Church	Mansfield	Stevens
Cook	Mathias	Stevenson
Cranston	McGee	Symington
Curtis	Metcalf	Taft
Dole	Mondale	Thurmond
Eagleton	Montoya	Tower
Ellender	Moss	Tunney
Fong	Muskie	Weicker
Fulbright	Nelson	Williams
Gambrell	Pastore	Young
Gravel	Pearson	

NOT VOTING—12

Allott	Hartke	McGovern
Baker	Humphrey	McIntyre
Chiles	Jackson	Mundt
Cooper	McClellan	Packwood

So Mr. ERVIN's amendment (No. 1071) was rejected.

Mr. ERVIN. Mr. President, for the information of the Senate I propose to offer two more amendments, and virtually back to back. I think we can finish voting on these two amendments in a

very few minutes. I would suggest that Senators remain in the Chamber instead of returning to their offices or committee rooms.

Mr. BYRD of West Virginia. Mr. President, would the Senator agree to a unanimous-consent order limiting time on each of the two amendments to not to exceed 10 minutes, to be divided equally between the mover of the amendment and the manager of the bill?

Mr. ERVIN. That is satisfactory to me. The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 472

Mr. ERVIN. Mr. President, the first of these amendments in amendment No. 472. I wish to modify that amendment so that it will conform to the amendment I now send to the desk, and I ask that it be stated as set forth in the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The amendment, as modified, was read as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

"ARTICLE—

"SECTION 1. Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them.

"SEC. 2. The Congress shall have the power to enforce the provisions of this article by appropriate legislation."

Mr. ERVIN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, this amendment is very simple. It is a substitute for the equal rights amendment. It would invalidate every Federal and every State law which makes any distinction between the legal rights of men and women unless that distinction is based upon physiological or functional differences between them.

In other words, I think most of the laws which now make the distinction between men and women are based on physiological and functional differences. The criminal laws are based on physiological differences, and the laws relating to labor and the rights of wives, mothers, and widows are based on functional differences between men and women.

I ask the Senate to repent of the evil course of conduct it has been following since these repentant amendments have been called up by adopting this amendment. The amendment would abolish the laws on the important relations between men and women, but still leave Congress with power to make reasonable distinctions between them.

I yield back the remainder of my time.

Mr. BAYH. Mr. President, once again we discuss basic philosophical differences that exist between the Senator from Indiana and the Senator from North Carolina. Suffice it to say that if this amendment is adopted, we might as well lock up shop and go home. We would have destroyed all the efforts we have been making to try, at long last, to provide equal opportunity—not special privilege, but equal opportunity—for women.

Let us be brutally frank as we take a look at various State laws in the country. These laws were not passed and they are not administered in a way which admittedly discriminates against women. No State legislature has courage enough to pass a bill and say the reason for passage is that it is trying to deny equal pay for equal work, or limit the admissions of women to State university to keep women out of work by requiring her to get a court order before she can go into business. These are specific laws which now exist. No, the reason why a woman must go into court and get a court order is that we are trying to protect her because of her physiological and functional differences is what is said by those who pass such laws. That is the basis which permits the discrimination to exist.

I know the Senator from North Carolina does not have that motive in mind, but that is the impact which the statutes that exist in the States of the Union often have.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. COOK. We have debated this substitute in committee on many occasions. If this substitute should prevail, we would have to send the amendment to the Senate-House conference where it will die. And then we would not have this volume of hearings of 800 pages and the other volumes of hearings, that go with this, to explain the meaning of the amendment. Is that not true?

Mr. BAYH. That is correct.

Mr. COOK. All the work of 49 years would be for naught. Agreeing to such proposals now would mean that we would have to introduce the original amendment again next year, and we would start on its 50th year. Is that correct?

Mr. BAYH. Yes.

Mr. COOK. As a matter of fact, if this is adopted, it would not be up to this body's interpretation of whether or not it applies to the laws as passed and for the purpose for which the substitute is submitted, but it would be for every State legislature, for every city council, for every legislative body, at any level, to make a determination of what they thought, within their wisdom, was the basis for which they could make a distinction. Is that not true?

Mr. BAYH. That is accurate. Permit me to cite two specific examples. A State legislature in State X could come to the conclusion that women generally, as a whole, as a group, are not able to defend themselves against attack at night. Thus, on that basis, the legislature could, under the wording of the present amendment, deny women the right of being employed at night because of the distinction that exists between them and men.

Mr. COOK. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. COOK. Let me give the Senator another example. If a State held that physiologically it was not wrong for a woman to work 40 hours, or even 60 hours, or more, and that it was not wrong

for a woman to work overtime, then she would have that privilege in one State but might be denied that in another.

Mr. BAYH. Yes.

Mr. COOK. Because the concept of the distinction could be settled differently in 50 different jurisdictions, as far as the States are concerned, and all the distinctions that any legislative body anywhere in the country could make. Is that correct?

Mr. BAYH. That is correct.

I yield back my time.

Mr. ERVIN. Mr. President. I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from Florida (Mr. CHILES) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Alaska (Mr. STEVENS) is detained on official business.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 12, nays 78, as follows:

[No. 120 Leg.]

YEAS—12

Bennett	Ervin	Hollings
Buckley	Fannin	Long
Byrd, Va.	Goldwater	Stafford
Eastland	Hansen	Stennis

NAYS—78

Aiken	Ellender	Muskie
Allen	Fong	Nelson
Allott	Gambrell	Pastore
Anderson	Gravel	Pearson
Baker	Griffin	Pell
Bayh	Gurney	Percy
Beall	Harris	Proxmire
Bellmon	Hart	Randolph
Bentsen	Hatfield	Ribicoff
Bible	Hruska	Roth
Boggs	Hughes	Saxbe
Brock	Humphrey	Schweiker
Brooke	Inouye	Scott
Burdick	Javits	Smith
Byrd, W. Va.	Jordan, N.C.	Sparkman
Cannon	Jordan, Idaho	Spong
Case	Kennedy	Stevenson
Church	Magnuson	Symington
Cook	Mansfield	Taft
Cooper	Mathias	Talmadge
Cotton	McGee	Thurmond
Cranston	Metcalf	Tower
Curtis	Miller	Tunney
Dole	Mondale	Weicker
Domnick	Montoya	Williams
Eagleton	Moss	Young

NOT VOTING—10

Chiles	McClellan	Packwood
Fulbright	McGovern	Stevens
Hartke	McIntyre	
Jackson	Mundt	

So Mr. ERVIN's amendment (No. 472), as modified, was rejected.

(Disturbance in the visitors' galleries.) Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate and in the galleries?

The PRESIDING OFFICER. The attention of visitors in the galleries is called to the fact that no demonstrations are permitted, either in favor or against.

Mr. STAFFORD subsequently (on March 28, 1972) said: Mr. President, on Vote No. 120, of March 22, 1972, I am incorrectly recorded as having voted "yea." I voted "nay" on that vote. I ask unanimous consent that the permanent RECORD and the Journal be corrected accordingly.

The PRESIDING OFFICER (Mr. Brock). Without objection, it is so ordered.

Therefore, on the above vote, the yeas are 11 and the nays are 79.

THE 2,000TH CONSECUTIVE ROLL-CALL VOTE FOR SENATOR PROXIMIRE

Mr. MANSFIELD. Mr. President, I am happy to announce to the Senate that with the most recent rollcall vote, our distinguished colleague, the Senator from Wisconsin (Mr. PROXIMIRE), has completed his 2,000th consecutive vote on a rollcall, beginning in April 1966. I think he deserves the credit of the Senate.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 904. An act to amend the Uniform Time Act to allow an option in the adoption of advanced time in certain cases; and

S. 3160. An act to provide for a modification in the par value of the dollar, and for other purposes.

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate continued with the consideration of the joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

AMENDMENT NO. 1044

Mr. ERVIN. Mr. President, I call up my amendment 1044.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without

objection, the amendment will be printed in the RECORD.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That the two articles set forth in sections 2 and 3 of this resolution are proposed in the alternative as amendments to the Constitution of the United States, one of which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within a period of seven years after the date of their admission by the Congress to the States. Upon the ratification of one such proposed amendment within that period, the other such proposed amendment shall have no further force or effect.

SEC. 2. The first article of amendment so proposed is the following:

"ARTICLE—

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

SEC. 3. The second article of amendment so proposed is the following:

"ARTICLE—

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses.

"SEC. 2. The Congress shall have the power to enforce the provisions of this article by appropriate legislation.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

Mr. ERVIN. Mr. President, this amendment is very simple. It is based on the realization that the people of the States have an interest in constitutional amendments just as much as Congress has.

This amendment provides that two proposed amendments to the Constitution shall be submitted to the States in the alternative, that one of these amendments shall be the equal rights amendment as set forth in House Joint Resolution 208, and that the second of these amendments shall embody provisions of the various separate amendments which I have heretofore submitted and upon which votes have heretofore been cast. In other words, it submits these amendments to the States, in the alternative, to allow them to take their choice between the two amendments—the equal rights amendment, as set out in House Joint Resolution 208, and an amendment embodying the separate amendments I have heretofore proposed, reading as follows:

The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions

to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses.

"Sec. 2. The Congress shall have the power to enforce the provisions of this article by appropriate legislation.

"Sec. 3. This amendment shall take effect two years after the date of ratification."

In other words, it just submits two amendments in the alternative to the States and allows the States to take their choice between the two amendments and to ratify the one of which they may approve.

I do not recall whether I have asked for the yeas and nays, but I do so now. The yeas and nays were ordered.

Mr. BAYH. Mr. President, the Senator from North Carolina is one of the most, if not the most, tenacious, and dedicated adversaries one can possibly have in debating a measure on the floor of the Senate.

The proposal he asks us to accept now would permit the various State legislatures to go on a fishing expedition to determine whether they thought the equal rights amendment as embodied in the pending order of business was their preference or the so-called equal rights amendment as embodied in the amendment of the Senator from North Carolina was their preference.

In my judgment, in the constitutional amendment process, Congress has to stand up and be counted. In this day and age particularly, let us not waffle. We are either for this amendment, the equal rights amendment, which has been the product of study and deliberation for 50 years, or we are against it. If we do not think it is good, let us not send it out to the State legislatures and shift the buck onto them. Let us make that determination for ourselves.

I should add that we have had five rollcall votes today and two or three yesterday, and each of the individual parts that is now embodied in the whole by the amendment of the Senator from North Carolina already has been decided; and the Senate, by a 70-some vote to a handful, has voted "no" on each of the parts. I respectfully suggest that the whole is no more acceptable.

Mr. COOK. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. COOK. Would this not, in effect, say that the States could not exercise responsibility toward acquiring a constitutional amendment in this field, because particular States could decide to accept first article and reject the second one and the next State could accept second article and reject the first one? In fact, we would have to have a tabulator, when we got all through, to find out where we stood, to be sure of coming to a conclusion, because part of it could be accepted and part rejected. Or would we have to see all 50 legislatures get together and see which one they were going to accept and which one to reject?

Mr. ERVIN. Only 38.

Mr. COOK. It would be difficult to get even 38 out of such a conglomeration as we have in front of us today.

Is that not correct?

Mr. BAYH. The Senator from Indiana said earlier that the best way to defeat the equal rights amendment was to divide our shots and then let each State legislator go back to his constituency and say, "I voted for the equal rights amendment when it was in my legislature." But you would never get three-quarters in agreement on anything. Just as Members of this body would like to add a word or a sentence, we are never going to get two-thirds in agreement until we recognize that this is as good a measure as we can have.

Let us vote this matter down so that we can, in short order, send to the State legislatures the one measure on which there is great support in the Senate and in the House and throughout the country.

Mr. MAGNUSON. Before we come to final passage, this may be a good time to put a query to the Senator from Indiana or any other Senator who can answer it.

Some concern has been expressed in my State and the other States that have had community property laws for a long time. I recall that last year or the year before, we had a long colloquy on the floor, the Senator from Indiana and I, as to how the amendment might affect the community property law system which is in effect in some States of the Union. It is a law which, I am sure, both men and women in my State would not like to see jeopardized or in any way to be modified or watered down. The community property laws offer great protection for women in many cases, particularly in cases of divorce suits and estates. I do not think there would be any sentiment for this amendment in my State legislature if it touched the traditional community property laws which are based on the old Spanish laws which have been in existence in my State ever since it was a territory. So I wonder whether the Senator from Indiana could briefly comment on that.

Mr. BAYH. That is a good point raised by the Senator from Washington. The equal rights amendment will in no way affect the disposition of community property under a community property law settlement. The State of Washington and particularly the State of Texas would not be affected at all because both the State of Washington and more recently the State of Texas have changed the provisions which existed in a handful of States which would permit, after an equal division, the husband to maintain sole managerial capacity in those few—

Mr. MAGNUSON. That used to be the law in the State of Washington.

Mr. BAYH. Yes; but it is not now.

Mr. MAGNUSON. It is not now.

Mr. BAYH. Texas recently revised its statute; so that the equal rights amendment will not affect the community property law one iota as written in the State of Washington.

Mr. MAGNUSON. My last question—and I shall be brief—is, when we come to the question of estates, basically the community property law is a matter of a 50-percent automatic division in a community estate which is set aside if the wife is the survivor. That is not neces-

sarily true the other way. She can will her separate property, but there have been some decisions that have declared in our State that if the husband is the sole survivor, he may not be able to touch her 50 percent. How would this affect estates? Leave the law as it is?

Mr. BAYH. The equal rights amendment would leave the statute as it is, yes. But the courts could not give to the widow rights in the estate of her husband which it would not give a widower in the estate of his wife.

Mr. MAGNUSON. As to the estates—

Mr. BAYH. Yes—equal disposition.

Mr. MAGNUSON. That has to be made crystal clear when it gets out into the community property States.

Mr. BAYH. I appreciate the Senator from Washington bringing this point to our attention.

Mr. ERVIN. Mr. President, if I may make one or two observations on that point. The community property States allow the husband to be the manager of the property and to control the property, so that the equal rights amendment would invalidate the community property law in every State where the husband is allowed to manage or control the property. There is no question about that. It depends on what the law of a particular State is on that point, but the community property laws would be invalidated by the equal rights amendment because it would discriminate against women by giving men the management and control of community property.

The PRESIDING OFFICER (Mr. ROTH). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment (No. 1044) of the distinguished Senator from North Carolina (Mr. ERVIN).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), and the Senator from New Hampshire (Mr. McINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. McINTYRE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Washington (Mr. JACKSON), the Senator from Michigan (Mr. HART), and the Senator from Florida (Mr. CHILES) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "nay."

The result was announced—yeas 9, nays 82, as follows:

[No. 121 Leg.]

YEAS—9

Bennett
Byrd, Va.
EastlandErvin
Fannin
HansenHollings
Long
Stennis

NAYS—82

Alken
Allen
Allott
Anderson
Baker
Bayh
Beall
Bellmon
Bentsen
Bible
Boggs
Brock
Brooke
Buckley
Burdick
Byrd, W. Va.
Cannon
Case
Church
Cook
Cooper
Cotton
Cranston
Curtis
Dole
Dominick
Eagleton
EllenderFong
Fulbright
Gambrell
Goldwater
Gravel
Griffin
Gurney
Harris
Hatfield
Hruska
Hughes
Humphrey
Inouye
Javits
Jordan, N.C.
Jordan, Idaho
Kennedy
Magnuson
Mansfield
Mathias
McGee
Metcalf
Miller
Mondale
Montoya
Moss
Muskie
NelsonPastore
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Roth
Saxbe
Schweiker
Scott
Smith
Sparkman
Spong
Stafford
Stevens
Stevenson
Symington
Taft
Talmadge
Thurmond
Tower
Tunney
Weicker
Williams
Young

NOT VOTING—9

Chiles
Hart
HartkeJackson
McClellan
McGovernMcIntyre
Mundt
Packwood

So Mr. ERVIN's amendment (No. 1044) was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 18) to amend the U.S. Information and Educational Exchange Act of 1948 to provide assistance to Radio Free Europe and Radio Liberty.

LEGISLATIVE PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the majority leader the schedule for the remainder of the day and the rest of the week.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate so that the Senators can hear the majority leader?

The PRESIDING OFFICER. The Senate will please be in order.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished Republican leader, it is my understanding that as of this moment there will be no further amendments and that very shortly we will reach the question on adoption of the pending joint resolution. Some Senators will want to make statements, and rightfully so, but I would hope other Senators who have not been so active in connection with this measure would consider the possibility of placing their remarks in the RECORD. It would be helpful. I make that suggestion because it is the intention to call up next the Ervin-Mansfield amendment, Senate Resolution 280, authorizing Senate intervention into Supreme Court proceedings on the issue of the

scope of article I, section 6, the so-called speech and debate clause of the Constitution.

It is my further understanding that there may be five amendments offered to that measure. At the present time the joint leadership is trying to work out a time limitation. Therefore, there will be further votes today.

When that is disposed of today, if it can be, it is anticipated that tomorrow we will take up the last two items on the calendar, if they are cleared on both sides, and evidently they are noncontroversial.

Then, we can take up S. 3178, to relieve broadcasters of the equal time requirement of section 315 with respect to candidates for President and Vice President. There will be rollcall votes on that measure tomorrow.

When that measure is disposed of we will take up S. 2895, a bill to enable producers of commercial eggs consistently to provide an adequate but not excessive supply of eggs to meet the needs of consumers, and so forth. That will take up most of tomorrow.

Then, on Friday we will take up an act to authorize certain naval vessel loans, H.R. 9526, to which there will be an amendment offered.

On Tuesday next the Senate will take up S. 1821, the measure dealing with air-cargo. There is a time limit agreement on this proposal.

Also on Tuesday next we will take up the so-called war powers bill; and in between, hopefully, the legislative appropriation bill which should be ready Tuesday or Wednesday. On Friday, or Monday, or Tuesday—and probably Friday—the conference report on Radio Free Europe and Radio Liberty should be ready.

Mr. SCOTT. Mr. President, will the Senator yield briefly with respect to the bill which provides for an adequate but not excessive supply of eggs? Since this is the Easter season, could the majority leader inform me how many is "not excessive"?

Mr. MANSFIELD. I do not know about eggs, but I know that hens are supposedly in excessive supply. [Laughter.]

Do not get me wrong.

Mr. SCOTT. I suggest the Senator wait until the final vote on the equal rights amendment.

Mr. MANSFIELD. I was not being facetious, but I did hear on the radio the other night in connection with this bill that there is an excess of 250 million hens, and that legislation has been recommended by the Committee on Agriculture to correct this imbalance.

Mr. SCOTT. I thank the majority leader.

PROBLEMS IN THE TRANSPORTATION INDUSTRY

Mr. MAGNUSON. Mr. President, with the current emphasis on the environment and the sharpening awareness of the flaws in our transportation system, it is natural that we be concerned. Daily, we search for the answers to the questions which will lead to a sound national transportation policy.

Mr. President, the remarks of John A. Creedy president of the Water

Transportation Association, Kentucky Chapter, made recently at the University of Louisville, highlight some of the problems in the transportation industry. Mr. Creedy's remarks show considerable expertise in the field and I ask unanimous consent that the text of his remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

TRANSPORT POLICY REFORM: CAN PROGRESS BE MADE NOW?

It is a pleasure and a privilege to be back in Louisville again to discuss transportation policy before the American Society of Traffic and Transportation.

The topic is: "Does the transportation industry really want deregulation?"

I could simply say "no" and sit down. But the problem isn't that simple—nothing in transportation is that simple. The concept of deregulation is a target that is changing shape rapidly as we go along—so rapidly that I think it can fairly be said that the deregulation issue is now obsolete.

Karl Marx lived to say he wasn't a marxist. I am told that Freud lived long enough to say he wasn't a freudian. In the end, Keynes denied he was a Keynesian. Similarly the deregulators have been around long enough now to deny they are any longer in favor of deregulation.

In testimony in January Richard W. McLaren, former chief of the antitrust division of Justice, stressed that he was not calling for an end to regulation, but rather a form of re-regulation.

So, to answer the question, we are not talking about the deregulation as it first burst upon us—the abolition of the ICC. There seems to be a growing recognition among shippers and in the Department of Transportation that the problem is not quite so simple as it first appeared, a willingness to say that maybe the deregulation proposal isn't perfect. One doesn't hear quite so often the refrain that those who run the transportation industry are uniquely stupid, that their views should be ignored, that solutions must be imposed on them over their opposition.

The most extreme form of this view was the suggestion advanced last year by one group of shippers that the industry was so incompetent that a commission should be formed, outside the ICC and the DOT, dominated by shippers, to determine cost standards for the industry—rather like asking the fox to guard the chickens.

Some of the errors of the more extremist thinking which so long held the center stage no longer have widespread support. We may be in a new phase in which we are prepared for progress. Dryden, the 17th Century English poet, put it neatly with these lines:

"Errors like straws upon the surface flow
He who would search for pearls must dive below."

It seems to me that a little intensive diving below, a little additional work on the propositions before us could bring back the pearls we all seek, action on a number of important change in national transport policy of a type which reasonable men can agree are inherently sound.

With open-mindedness and good will, we may arrive this year at those far-sighted policies which will enable the industry to attract investment on a basis that is competitive with the rest of the economy and thus forestall the present danger of nationalization and meet the industry's long range responsibility to the expanding economy.

We start with the public statement of the Department of Transportation that their bills are not necessarily the last word in wisdom. The carriers, on their part, have never described the Surface Transportation Act,

which rail, truck and water carriers support, as the complete answer to every problem. Both measures include very useful ideas. There would appear to be a real basis for common action between the DOT and the carriers.

I believe also that there is much common ground between the producers of transportation and the consumers, the shippers. Shippers are expecting the transportation industry to lay out tens of billions of dollars in the next few years for expansion of capacity to meet the needs of the growing economy and for improvement in service. Ultimately that investment must be underwritten by adequate earnings. If the transport industry is to remain under private enterprise, those earnings must be the basis for debt and equity investment on terms competitive with the rest of the economy. Rate levels must be adequate to provide those earnings.

In the last analysis, there is no dodging that issue.

It should therefore be possible for the shippers and carriers to agree on reasonable standards for adequate revenues and earnings, with proper safeguards to assure the shippers that adequate rate levels are indeed translated into adequate new capacity and improved service.

The water carriers have long advocated a method for taking most of the controversy out of the issue of adequate revenues and earnings. We have proposed that a careful study be made of capital requirements of the industry for the next five years or 10 years. Water Transport Association has done this for six of the major barge lines and the amount of money needed to take care of a modest expansion of five per cent a year and to maintain the fleet at an optimum 15 years average age is staggering. Reasonable people should have no problem with rate levels adequate to provide capacity needed by the public. If we show the shippers the role earnings have to play in their interest much of the controversy should fall away. Unless shippers are expecting the transportation industry to subsidize them—and I do not believe this is the case—a meeting of minds on the earnings issue should be possible.

There are a number of issues on which the DOT and the carriers may not agree in detail, but they certainly are in basic agreement in principle. Liberalization of abandonment procedures for unneeded railroad facilities, some kind of government loans or government guaranteed loans, accelerating the elimination of dangerous railroad grade crossings, minimizing discriminatory state taxation and eliminating ICC prescribed rates which are below out-of-pocket cost are broadly non-controversial.

It is hardly worth elaborating on the details of these issues because the public need is so evident.

But so far we haven't been able to resolve two issues of great importance, the lessening of government intervention in transport management decisions and the encouragement of vigorous competition. Of course fostering healthy competition inevitably reduces the need for detailed regulation.

Anyone who criticizes the effectiveness of competition in transportation has to answer the question "compared to what." The unregulated segment of the economy, judging by its price record alone, has performed less well than the transportation industry.

Freight rates have lagged far behind the wholesale and consumer price indices. Indeed, the economists who describe the structure of the unregulated economy say that managers of most of it are "too intelligent" to compete on a price basis. Thus over most of industry we have "administered prices," "mutual forbearance" and a general preference for competing by advertising or by service, but not, if they can help it, on a basis of price.

While we believe that transportation has done well compared to industry generally, and that there is active intermodal price competition in transportation, certainly there is no room for complacency. No one, least of all the ICC, believes the regulatory process is perfect.

As we come down to the wire this year, I suggest that the important changes in national policy on which we will, in the end, all agree will be those changes which greatly improve the regulatory process rather than undermine it.

Everything points in this direction. First, the carriers find many legitimate objections to proposals for deregulation. Second, the shippers are splintered in their views of what needs to be done and have been little help in determining new policies. Beyond the incantation "remove outmoded regulation" the actual proposals founder against the practical realities of the transportation market place.

The rate bureaus, for example, meet the pragmatic needs of both carriers and shippers and cannot be abolished or greatly weakened. If they remain, a public referee on the decision of rate bureaus must also remain. Rate deregulation founders on that basic dilemma.

It should however be possible to reform any abuses of rate bureaus, such as they are, without interfering with their legitimate function. All carriers are agreed on the need to identify and eliminate rate bureau abuses.

But I think we have to give urgent attention to ideas which would lead to the improvement of regulation. It is a proper objective of economic regulation to foster competition to the maximum extent feasible. Both the pressures and incentives of competition help to assure optimum performance in the public interest and lessen the need for regulatory action.

It wonderfully clears the mind in considering the issue of what constitutes a proper concept of healthy competition to review antitrust policies. In the unregulated segment of the economy, ambitious businessmen have tried a wide variety of tactics which, when stripped of all their complexities have a common theme. The would-be monopolist is the fellow who uses his inordinate leverage or market power to prevail on the basis of power and not of efficiency. That's the key. The antitrusters' objective is to make sure that the more efficient but less powerful competitor is not artificially shut out of an opportunity to compete.

Some 12 years ago, the water carrier industry commissioned a study of antitrust policies and at that time recommended that the experience of the antitrusters could both simplify and strengthen the regulatory process.

A fundamental aspect of existing antitrust policy is that it seeks to assure to the public the economic benefits associated with healthy competition—productive efficiency, price and quality rivalry, innovativeness—not by prescribing but by proscribing.

The basic goal is to insure, insofar as possible, that the way will be kept open for competitors to prevail in the market place on the basis of superior efficiency and performance, which advances the public interest, rather than superior power and leverage, which advances only the private interest. Accordingly, a basic approach may be to outlaw, as being truly anti-competitive, efforts to enhance market position through conduct, devices or practices which reflect, not the accomplishments of efficiency and performance, but the wielding of power and leverage.

We can identify explicitly in transportation, as we have in the unregulated segment of the economy, those practices which can and should be outlawed because they lead to the suppression of competition. Supplementing regulatory experience with antitrust ex-

perience in factual situations, we can greatly stimulate and expedite the regulatory process and free up new opportunities for competition.

It will interest you that at a forum on March 11 last year at the University of Louisville, before this same group, in commenting on how to strengthen the transportation system, I advocated common action on an industry program by railroads, water carriers and truckers. The suggestion was not an idle one. Over the previous six months I had been visiting with eastern, southern and western railroads and with truckers to explore such a program. Independently, the truckers had been thinking along the same lines. It was very shortly after your meeting last year that the three modes were able to agree on a common program which became the Hartke-Adams Surface Transportation Act.

The program we developed was heavily weighted in favor of the railroads. There was relatively little in it for the water carriers or the truckers. It represented our mutual recognition that the railroad problem was more severe than ours, but of a nature that would reach all of us if it were not turned around. There is today a distinct danger of nationalization of the railroads. If that happened it would be a turning point in the long history of our country because if we can't solve the railroad problems under free enterprise, the rot will spread to the rest of transportation and from there to the electric utilities, from there to coal and from there to steel and who knows where it will end. The truckers, the railroads and ourselves believe that every effort reasonable men can put forward should be exerted to prevent nationalization of the railroads. Our competitive free enterprise system is a bright passage in human experience, more productive, more capable of spreading the benefits of civilized living to more people than any other system devised by man.

The most important single thing about this rail-water-truck alliance is the ability it has demonstrated to reach agreement on important issues. That is new in the transportation industry. Always before we have spent our energies and time defeating each other's proposals.

This is a new force. Shippers, the Congress, the Department of Transportation should use it and build on it.

It is my faith that, working together, we can discover and then achieve in the public interest those broad new policies which men of good will recognize as inherently sound.

UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT AT STOCKHOLM, SWEDEN

Mr. MAGNUSON. Mr. President, in June, more than a thousand delegates from 130 countries will meet at the United Nations Conference on the Human Environment at Stockholm. Their mandate is to arrive at agreement on the first steps of a cooperative global effort to keep this planet habitable for man. Their responsibility is so awesome and their task of such enormity, that few can fully comprehend it at this time. The success of this first international venture in managing man's only habitat is so critical to his biological and physical health that we dare not comprehend its failure.

Preparations for the Conference have been underway now for well over a year. Those of us who have observed these events are confident that the Conference's Secretary-General, Mr. Maurice Strong, was an excellent choice to head up such an important undertaking. He

has been extremely effective in stimulating a broad program of preparatory work at both the national and international levels, and he has brought to the task an infectious enthusiasm that is providing a great deal of hard thinking on the issues that will hold the center of the stage at Stockholm.

Not the least among these efforts is the considerable amount of interest and work that has been generated here in the United States. Our representative on the Conference's Preparatory Committee, Mr. Christian Herter, Jr., Special Assistant to the Secretary of State for Environmental Affairs, is supported by the work of a number of Federal agencies and interagency groups as well as by the generous contributions being made by private organizations of highly qualified experts from the professional, academic and industrial communities. Finally, the Secretary of State has established an Advisory Committee on the Conference, which is chaired by our colleague, the Senior Senator from Tennessee. This committee acts as a channel through which the views of the public can be made known to our representatives to the Stockholm Conference.

The agenda for the Stockholm Conference has been set to include the environmental aspects of six main subject areas, and it is expected that discussions of these areas will lead to the adoption of an action plan. Generally speaking, the six areas include: planning and management of human settlements; natural resource management; identification and control of pollutants; educational and informational aspects; development; and the organizational implications of action proposals.

It is the last of these subjects—the question of what agency will be designed or designated to carry out an effective program of environmental management—that is of particular interest to me. I am persuaded that unless the Conference is able to take decisive steps on the question of how the effort is to be organized, then any agreements that might be reached on other agenda items can never be implemented.

The question of organization of an international environmental effort is one that has concerned and occupied a number of groups and individuals ever since the idea of a global effort was conceived. It is one which continues to be studied with diligence, for I believe there is growing recognition that this may be one of the thorniest problems facing the Conference.

At the center of the problem of organizing a global effort is the question which continues to present the most serious hurdle to the understanding and agreement that the making of public policy requires. That is the question of how to translate scientific information generated throughout the various disciplines to the public decisionmaking level. Among the complex problems facing society today, few contain in such measure the ingredients that make for a full flowering of this dilemma as the one we have tagged "the environmental problem"—in reality, a whole class of problems.

It is axiomatic that solutions to environmental problems—if they are to be

achieved—must be based, first, on intelligent assessments of their nature, extent, and consequences. Second, they require that decisionmakers understand the technological possibilities and methods that can be utilized for the amelioration of those problems. Both of these areas are functions of the translation—or transference—of scientific information to the public decisionmaking level.

At this point in time, scientific information on the environment is fragmented and scattered throughout the disciplines. A great number of organizations have been involved for years in one or another of the diverse activities subsumed by the term "environment."

This is demonstrated by the most cursory examination of hundreds of publications whose focus is one or another aspect of man's relation to his physical environment.

That there are a great number of international organizations involved in the diverse activities connected with the environment is demonstrated by a study published early last year by the Committee on Commerce. In that study, we attempted to identify as many international organizations as possible whose functions and interests concerned one or another aspect of the environment. Our report, which is entitled "Environmental Activities of International Organizations," identified about a hundred such organizations. While some had interests that covered a wide range of environmental problems, we found most to be concerned with only a part of the total picture—in many instances, in activities that were incidental to their main function; for example, economic development, food production, disease prevention, or scientific research.

A WORLD ENVIRONMENTAL INSTITUTE

Senators will remember that more than a year ago this body addressed itself to the question of bringing all of this diverse scientific information together so that legislators and other public policymakers could benefit from the knowledge being generated by the scientific community. Senate Resolution 399, which was approved by the Senate on October 9, 1970, recommended that our representatives to the Stockholm Conference propose the creation of a World Environmental Institute, "to act as a global research center and to disseminate knowledge of environmental problems and their solution to all nations of the world . . ." I was proud to have introduced that resolution, which was cosponsored by more than 40 Senators, and I was gratified that it was approved by this House.

I noted, when we passed Senate Resolution 399, that its aims were supported by the international scientific community as represented by the International Council of Scientific Unions, as well as by our National Academy of Sciences Committee for International Environmental Programs and the U.S. Executive Committee for the International Biological Program.

Last June, the Interparliamentary Union adopted a motion which, as I read it, adds the endorsement of yet another distinguished body to the concept of a worldwide clearinghouse for

environmental information. At its Conference on the Environment, held in Bonn, the IPU representatives adopted a motion recommending that legislators support "urgent international consultation and action" to arrangements to provide the institutional framework which was contemplated in Senate Resolution 399. Specifically, the IPU motion stated:

Information on public environmental programs and their implementation both at national and international levels should be centralized in order to give easy access to procedures and techniques which can be of potential benefit to the environment.

And further, the IPU motion stated:

An international Data Bank whose function it would be to collect information on pollution, to interpret it and make it available to all countries, should be established.

In recent months, Mr. President, two notable studies of this problem of the institutional framework for an international environmental effort have been made. Both of these studies were conducted by highly qualified scholars and scientists. Their recommendations, I believe, deserve the serious attention of our representatives to the Stockholm Conference.

SCIENCE AND INTERNATIONAL DECISIONMAKING

The first of these groups was jointly sponsored by the International Institute for Environmental Affairs and the Aspen Institute for Humanistic Studies. This "International Environmental Workshop" was held at Aspen, Colo., last summer, and its report contains the recommendations of the group for organizing the global environmental effort. I understand the report entitled "The Human Environment: Science and International Decision-Making," has been forwarded to Secretary General Strong. I have read it and commend what I consider its sound conclusions and recommendations to every Member of Congress.

By way of introducing a very brief description of the Institute's recommendations, Mr. President, I want to quote one sentence from the report. It is this:

The most compelling organizational requirement is to forge an intimate working relationship in international environmental affairs between the intergovernmental community and the world of science and technology.

I was struck, when I read that conclusion both by its logic and by its essential agreement with the conclusions reached by a group of scientists and statesmen who met here at the Capitol in May of last year, at a Colloquium on International Environmental Science. That meeting, sponsored jointly by the Senate's Committee on Commerce and the Committee on Science and Astronautics of the House of Representatives, was attended by a number of distinguished leaders and environmental scientists who met to discuss with Members of Congress the needs of international environmental science. We had a productive 2-day exchange of views which inevitably turned to the question of how scientific knowledge could be organized and used as the basis for policy decisions on what is basically a scientific problem. At the end of the second day's discussions, Dr. Thomas Malone, vice president of the International Council of Scientific

Unions, who acted as rapporteur for the colloquium, in his summary remarks stated a general consensus of the meeting. He said:

We will have to set up institutions . . . We need a small policy council at the U.N. level to review and to coordinate. We need national governments carrying on monitoring programs, coordinated by specialized agencies. We need regional organizations working together.

But the big need is the knowledge need, and as I sat and listened to these discussions, I became more and more convinced that we do need a World Environmental Institute, which can bring to bear on this problem these sophisticated techniques . . . that will provide the link between informative environmental knowledge and public policy . . .

With this as a background, let me turn now to a brief discussion of the recommendations of the International Environmental Workshop, which I mentioned a moment ago. The report describes the workshop's proposals as "minimal steps" to meet present organizational needs and to generate further institutional partnership in the future. To initiate this institutional system for environmental cooperation, four instruments are recommended:

First. The establishment of a small, dynamic, self-contained unit for environmental affairs at a high level in the United Nations.

The report does not specify the kind of "unit"—whether it take the form of a council or committee, or some other—but assumes that agreement on the functions and roles of such a unit would ultimately determine its administrative form. The purpose of the unit would be to provide an overall focal point and to perform specified central services for member governments as well as for U.N. agencies. Most important, it would constitute liaison between the intergovernmental community and the community of science and technology.

Second. The workshop recommends the establishment, by the world scientific community, of a World Institute for Environmental Research and Development.

This is envisioned as a counterpart to the U.N. environmental unit and as its principal partner in the nongovernmental world of science and technology. The recommendation contemplates the Institute as one removed as far as possible from questions of political motivation, yet linked in some explicit way with the intergovernmental community. Such "insulation" would be insured by provisions calling for financing the Institute through voluntary contributions from governments, and for management of the Institute by the scientific community.

Third. The group recommends that "regional centers of excellence" in environmental affairs be created in major developing areas of the world.

As I understand this recommendation, the regional centers would be essentially independent units, to promote an integrated approach to environmental problems in each region, to provide the scientific information needed by decision-makers within the region, and to advise—and be assisted by—the environmental unit established within the United Nations. No standardized regional unit is contemplated by the workshop recom-

mendation, but each would reflect patterns of organization commonly found in various regions of the world. One may think of these centers as regional partners of the unit established within the United Nations.

Fourth. The group's final organizational component is the establishment, by voluntary government contributions, of a World Fund for the Environment, to be administered by the United Nations unit for environmental affairs.

While most of the funds required for environmental protection and improvement will probably be invested in national programs by governments and other bodies, the operation of this new proposed international structure, as well as the need for new surveys, research, and educational needs connected with the international approach will require additional expenditures. Financing cannot be accomplished by diverting funds from already-approved programs at the intergovernmental level; most of these are probably not receiving sufficient funding at the present time to carry out their assigned functions. So new sources of financing must be provided to implement new functions, such as filling out the missing links in a complete global monitoring system, aiding the establishment of the regional centers, providing special assistance to developing countries for environmental surveys, and the like.

INSTITUTIONAL IMPLICATIONS OF INTERNATIONAL ENVIRONMENTAL COOPERATION

The second examination of the problem of providing adequate institutional arrangements for environmental protection and management at the international level was made by the Committee for International Environmental Programs of the National Academy of Sciences. The Committee's report, "The Institutional Implications of International Environmental Cooperation" was released on November 1, 1971. The tone of the report is set out in its introduction, particularly in the paragraph following a statement to the effect that the burden of environmental problems on the organizations determining policy is such that, unless institutional capacities are improved we will face "an accelerating decline into chaos." The report's introduction then states:

The irony here is that organized man is not now using effectively either knowledge or resources currently available for the amelioration of social and environmental problems; nor is he yet moving effectively to generate new knowledge essential to the resolution of these problems. The irony could turn to tragedy if he now fails to direct the rapidly growing potential of science and technology toward coping more effectively with his difficulties. An imperative need to put knowledge more fully at the service of social decision making is the basic factor of the institutional question.

The Committee's recommendations, which are directed to the Department of State, focuses on issues which are among the principal agenda items of the 1972 U.N. Conference. As stated in the introduction they are to be regarded as "first steps" rather than "ideal solutions" of problems of coming to terms with the environment at the international level. I should like to include those recommen-

dations at this point, with the comment that their similarity to other findings and recommendations I have mentioned commend their serious consideration by those who will represent the United States at the Stockholm Conference.

The report recommends that the U.S. Government:

First. Initiate and responsibly participate, as a matter of policy serving the national interest and the interests of other nations, in international programs designed to cope with critical environmental problems; and

Second. Initiate and support, to this end, the establishment of new, and the adaptation of existing, institutions to assure effective and systematic exploration and treatment of such problems.

Specifically, the report recommends that the U.S. Government support:

The establishment of a single focal point in the United Nations system to provide central leadership, to assure a comprehensive and integrated overview of environmental problems and develop stronger linkages among environmental institutions and the constituencies which they serve.

The creation of an independent global environmental science advisory and research board to provide scientific counsel to decision makers in intergovernmental and governmental agencies, supported by such research capabilities as are needed to assure and substantiate scientific credibility of judgments rendered.

Proposals, such as those advanced by the UN Intergovernmental Working Group on Monitoring or Surveillance and by the Scientific Committee on Problems of the Environment (SCOPE) of the International Council of Scientific Unions (ICSU), to have the United Nations develop a global monitoring system based on the coordinated use of existing facilities but supplemented by such additional institutional arrangements as will be required to observe, trace, and assess the impact of critical substances affecting man and the biosphere.

The establishment of a world fund for the human environment to support the non-housekeeping activities of the UN environmental unit and to be administered by that unit to meet the costs of catalyzing global environmental action.

Current initiatives by transnational or regional organizations to deal with environmental problems as an integral or supplemental part of ongoing programs and that it encourage and support current trends to establish transnational or regional organizations wherever such arrangements are instituted to address common problems of critical importance and where national capabilities are inadequate to deal with them effectively.

Mr. President, in closing these remarks, I want to restate my conviction that mankind faces no greater challenge than the one posed by the environmental predicament his activities have produced, and will continue to produce, as the earth's growing populations in the very near future continue to exact increasing demands on the planet. The answer to that predicament lies in effective cooperation between the world of science and the institutions of government—both national and international.

The recommendations I have just reported appear to me to call for sensible and feasible first steps toward achieving that cooperation. I hope they will be seriously studied by our delegates at Stockholm in June, and I hope that Senators will examine and support them.

EQUAL RIGHTS FOR MEN AND WOMEN

The Senate continued with the consideration of the joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the third reading of the joint resolution.

The joint resolution (H.J. Res. 208) was ordered to a third reading and was read the third time.

Mr. MILLER. Mr. President, I shall vote for the pending proposed constitutional amendment.

For 50 years, women's groups have sought to put an end to discrimination by reason of sex—especially in the areas of education and employment. They have also been understandably resentful of practices and, in some cases, laws which treat their sex as "inferior"—a position which is morally unjustifiable and completely incompatible with an enlightened, progressive society.

I believe they are entitled to have their preferred version of an equal rights constitutional amendment referred to the State legislatures for possible ratification.

I regret that the particular version they have chosen admits of interpretations which could cause serious trouble in the ratification process. For example, will three-fourths of the State legislatures ratify a constitutional amendment under which young women could be drafted and, further, assigned to combat duties?

The Senate rejected an amendment which would have avoided such an interpretation. I voted for the amendment for two reasons: First, I doubt that a majority of the people I represent desire such a result; and second, such a result is not needed to achieve the objectives being sought—objectives which most of us fully support.

However, if ratification should fail, there can still be no doubt but what the Congress is clearly on record against Federal laws which would discriminate against our citizens because of their sex. This, alone, is a major achievement.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Florida (Mr. CHILES).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR CHILES

Mr. CHILES. Mr. President, I strongly support the Equal Rights Amendment. This amendment will declare the national policy and supreme law of the land to be that sex discrimination on any level of government is wrong. I think we have at long last come to realize that it is only through such a strong declaration—through an amendment to the U.S. Constitution, that we can eliminate the legal sex discrimination that exists in certain aspects of life throughout our country.

While I recognize that there has been some important progress made toward the goal of equal rights and responsibilities for women

and men, particularly in recent years, I know too that definite patterns of sex discrimination persist.

Up until today, we have been trying to eliminate the legal sex discrimination that permeates our society on a purely piecemeal basis. We have passed some laws—title VII of the Civil Rights Act of 1964 for example, which excluded women from juries altogether, or the Equal Pay Act; but our legislative action, like our court action has been slow, fragmented, and inadequate.

It is hard for me to believe that today, in 1972, women are sometimes still denied even the basic rights and responsibilities of citizenship. Up until 1966 there were three States which excluded women from juries altogether and even today there is one State which requires that women, but not men, register specially to be eligible to serve on juries. Discrimination against women is evident in the criminal laws of some States, in college admissions policies, in acceptance into the professions; and the business and labor laws of certain States are also often blatantly discriminatory. Many States have so-called "protective" labor legislation—laws that often serve rather to restrict and discriminate than to protect. Sex discrimination in employment is today even obvious in Government employment. Women constituted 34 percent of all fulltime white collar Federal civil service employees in 1967. At that time they filed more than 62 percent of the four lowest grades and only 2.5 percent or less of the four highest grades.

I fully realize there are those who argue that the discriminatory laws, rules and practices could possibly be eliminated administratively, or legislatively without recourse to constitutional amendment. But the Court has refused to hold that discrimination based on sex, like racial discrimination is inherently "suspect" and cannot be justified in the absence of a "compelling and overriding State interest."

We cannot, I believe, wait any longer for Congress or the State legislatures to take the time to weigh, consider and debate their various laws concerning the equality of men and women before the law. And I think it is high time the women of our country had some tangible evidence of this Nation's commitment to their equal treatment. Therefore, I am pleased to support this historic legislation before the Senate today. After careful consideration, I cannot come to any other conclusion than this: Because of the legal sex discrimination in our country today, the best way to rid our social, cultural and economic life of this discrimination is through the passage of the Equal Rights Amendment. I support the House Joint Resolution 208 without amendment.

Mr. BUCKLEY. Mr. President, I have studied the committee report in support of the equal rights amendment with the greatest care, just as I have the arguments on the floor of the Senate in favor of and in opposition to the amendment in its present form.

I find myself in full agreement with the finding that there still exists in our country a discrimination against women which cannot be justified and which ought not to be tolerated. As to this I feel there is virtually no disagreement either within the Senate or within the United States as a whole. The argument, therefore, concerns only the question of how best to redress these legitimate grievances.

In America today we find three factors which affect the relative rights, prerogatives, duties, immunities, and obligations of men and women. Some of these

are cultural, others social, and the balance economic. I speak of distinctions based on sex, deferences conferred because of sex, and discrimination which is predicated on sex. Only the last, I submit, is the proper target of the amendment now under consideration and of the enormous effort by the women of America to redress their longstanding and legitimate grievances. Yet the proposed equal rights amendment would have the inevitable effect of obliterating all of these differentiations—these distinctions, deferences, and discriminations—in the name of an abstract equality, of whether they in fact infringe upon the substantive rights of women.

It is because of this—because, quite specifically, of my deep respect for women—that I cannot support the amendment; and I cannot support it because whatever the intentions of its sponsors, I think we will inevitably find it tugged and twisted and extended far beyond the limits of commonsense and reason. I am opposed to the proposed amendment because, in its attempt to eliminate discrimination against women, it will at the same time inevitably strike down those distinctions and those deferences which our society now extends to women. It seems to me that the discriminations which all of us want to see ended can be more effectively accomplished in other ways, as I shall discuss later in my remarks.

Now I recognize that many militants regard the deferences and distinctions which are embedded in our social customs as discriminatory per se. Yet, if in fact these customs and attitudes do not penalize women, I cannot see why we should be forced to abandon them. Yet that is precisely what would happen to many of our existing conventions based on the analyses given by the proponents themselves.

Let me merely cite a few examples of the effects of the equal rights amendment which are reported in the committee report, and in an article in the Yale Law Journal, which has been cited by the principal proponents of the amendment as best describing its probable consequences.

One of the most immediate and obvious results of the amendment would be to make women equally subject to being drafted into military service as men; and more than that, "women will serve in all kinds of units, and they will be eligible for combat duty." Quite frankly, I cannot see why we should adopt a constitutional amendment which would preclude American society from determining that the obligation to serve in the infantry and other combat forces will be restricted to men. I cannot, for the life of me, see where this distinction would relegate women to the category of "second class citizens."

We are also told, with respect to deferment policies for parents with dependent children, that such policies "could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female, would be de-

ferred." This despite the fact that the mother in our country usually has the primary, direct responsibility for the care and upbringing of children. While stating unequivocally that women would be as subject to combat duty as men, the article in the Yale Law Journal mentions that "it is important to remember that all combat is dangerous, degrading and dehumanizing." If this be so, then why is it wrong for our society as a whole men and women alike, to conclude that it is to our social benefit to see to it that that parent who is most closely associated with the upbringing and training of the next generation is spared that "degrading and dehumanizing" experience?

Let us move on to the field of criminal law. We are told by the proponents of the amendment that—

Statutory rape laws, which punish men or having sexual intercourse with any woman under an age specified by law—(would) suffer a double defect under the Equal Rights Amendment. To be sure, the singling out of women probably reflects sociological reality . . . Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard.

With respect to the traditional concepts of parental and familial obligations, the proposed amendment would have, according to its sponsors, the following effects:

In ninety percent of custody cases the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent. . . . In all states husbands are primarily liable for the support of their wives and children . . . (but) the child support sections of the criminal nonsupport laws . . . could not be sustained where only the male is liable for support. . . . The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex.

These, then, are the admitted practical consequences of the adoption of the proposed amendment. I would like to suggest, however, on the basis of our experience with the sometimes extravagant extension of newly defined rights in other fields, that in due course extremist groups will demand, and some Federal regulators and some Federal courts will concede, other interpretations too bizarre to contemplate.

Mr. President, this entire discussion and debate rests at bottom on certain assumptions about the meaning of the word "equality."

It is a word of singularly elusive meaning, and it is therefore incumbent upon Congress, in passing on this proposal, to make as clear as it possibly can just what is intended. As Mr. Justice Frankfurter once remarked:

Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effectuate a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air;

it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate, and he ought not to be led off the trail by tests that have overtones of subjective design.

It is here, I must confess, that in seeking to limit the ambiguity of the word "equality" to an irreducible minimum, I find the proponents of the measure to be less than fully enlightening. From the outset, proponents of the amendment both within Congress and without, have oscillated between two conflicting interpretations of the amendment's central purpose. Even now, on the eve of the vote, they seem uncertain as to which understanding ought to operate as the controlling intent.

The first interpretation, which derives from what might be called the "unisexual" approach to the problem, holds in effect that any legal classification based on sex would be *per se* unconstitutional under the proposed amendment. The second interpretation, seeking to avoid the necessary rigidities of a *per se* rule, holds that sexual classifications are valid provided that they are applied equally to both sexes.

The first view is articulated by Prof. Thomas I. Emerson and others, who in the Yale Law Journal article so widely praised and disseminated by congressional sponsors of the amendment, writes as follows:

The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of *any* person by the law may not be based upon the circumstance that such person is of one sex or of the other.

The second view will be found, among other places, in a legal memorandum being distributed by the Citizens' Advisory Council on the Status of Women, which warmly endorses the amendment in its present form. The memorandum states:

The Equal Rights Amendment would not nullify all laws distinguishing on the basis of sex, but would require that the law treat men and women equally.

The Emerson view would, presumably, obliterate all distinctions based on sex; whereas the council view would, presumably, tend in the direction of "separate but equal." But it is not at all easy to say. It was the Emerson view, presumably, which prompted the Coast Guard recently to promulgate regulations to allow female members of a ship's crew to use washroom and toilet facilities that are also used by male members of a crew. The council view, presumably, would permit separate facilities. But, again, it is not easy to say which view ought to be thought of as controlling the intention of Congress. But if the intention of Congress is ambiguous with respect to something so ludicrous as washroom and toilet facilities, how can we expect the courts to find clarity of intention with respect to a whole host of genuine and important problems of construction that may arise once this amendment is passed? I pity the judge who will be obliged to wallow through the legislative history of this proposal in search of clarity where there

is none, vainly trying to pin Congress down where Congress has deliberately sought to be evasive.

Mr. President, I do not commonly find myself in agreement with the editorial writers of the New York Times, and, as it happens, we are in disagreement as to the substantive merits of the proposal now before us. But on the occasion of the passage of the equal right amendment by the House, the Times, I thought, said something that badly needed saying:

Equal rights for women is a proposition so unarguable in principle and so long overdue in practice that it is a pity to have it approached by the House of Representatives as an exercise in political opportunism. For 47 years that body regularly rejected out of hand all proposals for a women's rights amendment to the Constitution. Now it approves, without committee hearings and after only an hour's debate, a constitutional change of almost mischievous ambiguity.

Despite extended hearings, and despite debate here on the floor, it seems to me that the Senate is indulging precisely the same kind of mischievous ambiguity that possessed the House. At the root of this ambiguity is a fundamental confusion between so-called equal rights—which is in itself a problematic concept, as I suggested earlier—and so-called women's rights. The former tends in the direction of, and if some proponents of the measure are to be believed, actually embraces the idea of sameness and would therefore tend to obliterate altogether any legal distinctions based on sex. The latter, rightly understood, seeks to eliminate only those laws which discriminate against women as such and which relegate them to an inferior legal status. If the latter concept were the controlling intention of the proponents, and if it were certain that the courts would implement that intention and refrain from indulging the excesses of "unisexual," I would gladly support an amendment designed to accomplish the goal.

But I am convinced, Mr. President, that the present amendment is not so limited, and I am further convinced that adequate remedies exist today to correct the inequities which are the appropriate targets for a women's rights amendment. The most important of these, of course, is the 14th amendment. In the past, some have doubted whether that amendment could be used as an effective vehicle for the elimination of unreasonable classifications based on sex. But the Supreme Court last December clearly opened the door to future litigation to test the constitutionality of all such classifications.

In the case of Reed against Reed, the court struck down an Idaho statute which granted preference to males over females in the appointment of administrators for decedents' estates, holding that the discrimination bore no reasonable relationship to the purpose sought to be accomplished by the law of estate administration.

To all but the most ardent zealots of the women's liberation movement, the decision must be considered as a dramatic breakthrough on behalf of women's rights. And it suggests, as Prof. Paul Freund of Harvard has pointed out, that if the advocates of the proposed amend-

ment had in the past devoted as much time, energy, and money to artful litigation under the 14th amendment as they have in the past year or so to lobbying for the equal rights amendment, the alleged necessity for such a wide-ranging amendment might not have existed at all in 1972. But if past opportunities cannot be recovered, I believe that Reed against Reed bodes well for the future and that a wide variety of unjustly discriminatory laws can be struck down as arbitrary and unreasonable.

The 14th amendment, of course, is not the only legal remedy available to aggrieved women. Title VII of the Civil Rights Act of 1964, which Congress recently amended to provide greatly enlarged enforcement powers for the EEOC, provides yet another powerful tool for the relief of women discriminated against in the field of employment. Litigation under the 14th amendment and under title VII seems to me to provide adequate remedies for the great majority of cases in which women are relegated to an inferior legal status.

It has been suggested that litigation under the 14th amendment, involving as it does a test of "reasonableness," would be unavailing in those cases where women are the ostensible beneficiaries of State legislation, the theory being that the courts would be disposed to uphold laws designed for the benefit of women, notwithstanding their adversely discriminatory character. Given Reed against Reed and certain other cases on the lower Federal court and State court levels, I am not convinced that this argument is so weighty as perhaps it once was.

I am, therefore, encouraged in the belief that a case-by-case approach will produce efficacious results. Certain advocates of the women's liberation movement tend to pooh-pooh the effectiveness of such piecemeal litigation. But experience will testify to the fact, I believe, that rights won by the gradual, if admittedly sometimes tedious process of litigation acquire a more permanent constitutional security than the often ephemeral promises of vaguely worded statutes, fleshed out with grandiloquent humanitarian sentiments but very little else.

Litigation under existing constitutional and statutory provisions would have another advantage, one that is to my mind the most important of all. It is that litigation, proceeding as it does from case A to case B to case C until a rule of reasonable general applicability is framed, is more likely to protect the interests of those women who want and need protection. This is something that very much needs talking about, although given the passions which animate the women's liberation movement it has for the most part been so far ignored.

The most conspicuous and outspoken representatives of the women's liberation movement have a habit of talking as if they were the duly appointed guardians of the women of America. Whether the women of America want or need this kind of guardianship, however, is another matter altogether. I am unaware of any plebiscite granting representative au-

thority to the women's liberation movement from the women of America, nor am I aware of any demonstrable indication that the women of America approve of what their self-appointed guardians would have delivered up for them. On the contrary, as the distinguished Senator from North Carolina has pointed out, in the only detailed poll taken on the subject, the overwhelming majority of those polled revealed a singular indifference, if not hostility, toward the more obvious legal consequences that would flow from the passage of the equal rights amendment. Fully 77 percent of American women opposed equal treatment with respect to military service; 83 percent opposed the idea that a wife should be the breadwinner if she were a better wage earner than her husband; and 69 percent opposed the idea that a woman should pay alimony if she has money and her husband does not.

Yet, as I suggested earlier, if the equal rights amendment were to be ratified, women would be drafted and could be required to serve in combat; States would be barred from imposing greater liability for support on a husband than on a wife merely because of his sex; criminal sanctions for failure to support one's family could not be sustained where only the male is liable for such support; and obligation for alimony could be placed upon either spouse. Such changes in the law may bring joy to the hearts of the more militant advocates of the women's liberation movement, but they are not necessarily in the interests of most American women. As Prof. Philip Kurland, of the University of Chicago, has pointed out:

There remains . . . a very large part of the female population on whom the imposition of such a constitutional standard could be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keepers of their homes. There are a multitude of women who still find fulfillment in this role. This may be unfortunate in the eyes of some; it remains a fact. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Nor can women be regarded as unified in their desire for this change. Certainly the desire to open opportunities for some of them can be achieved without the price of removal of the protection of others.

I concur with Professor Kurland, but I would go him one further. I not only believe that the great majority of American women find fulfillment in their roles as wives and mothers, but I suspect that the great majority of American women are inclined to resent the demeaning, derogatory, and cynical posture taken against marriage and motherhood by some of the outspoken advocates of the women's liberation movement, as if marriage and motherhood were the hallmarks of inferiority and servitude. To be sure, not all feminists share this jaundiced view, a fact for which we can all be thankful. There are many articulate and engaging activists in the movement, and they have made a compelling case for altering many of our laws which unjustly discriminate against women, es-

pecially in the area of job opportunities. With many of their grievances I am in great sympathy, but with Professor Kurland, I am satisfied that present constitutional and statutory law provide ample opportunities for redress. I am not at all convinced that the "liberation" of some women requires the removal of legal protections from others or the imposition of greater legal burdens upon those who do not share the goals of the liberationists.

Professor Kurland has written:

The temper of our times demands instant and simplistic answers to complex problems. And it is this temper that assumes that the cure for such problems lies in the incantation of the word "equality" by our highest governmental means, the Constitution. . . .

I believe that a principled case can be made for the elimination of such laws as may unjustly discriminate against women. The operative word in that formulation, of course, is "unjustly." But "injustice" is no less slippery a term than "equality," and it is difficult in the abstract—as every wise man since Plato has known—to declare fully and finally what it entails. The central difficulty with the equal rights amendment is that it assumes that equality constitutes the whole of justice, and that sameness of treatment constitutes the whole of equality.

I must admit to being somewhat skeptical about the validity of either proposition. I can conceive of cases where the status of women in our society would be advanced by granting or retaining certain legal protections, which, from the perspective of the women's liberation movement, would be considered as remnants of an outmoded "male chauvinism"; but I can also conceive of cases where such ostensible protections or benefits actually work undue hardships upon women and ought therefore to be struck down or modified.

I do not believe, however, that the best way to go about deciding these complex matters is to adopt an ambiguous far-reaching, and ideologically rigid constitutional amendment. I am prepared, in short, to examine each case as it arises, and I am convinced that the Constitution as it now stands, combined with a variety of State and Federal statutory remedies, is sufficient to the task. There are many injustices in this world, but a constitutional amendment, least of all one so vague in its thrust as this one, is not always the best way to eradicate them. Should this amendment be ratified by the several States, I fear that "victory" for some women will have been bought at the price of injuring others. It will not be the first time that a proposal designed to eliminate alleged injustices actually ends up by creating injustices far worse than those it sought to eliminate.

Mr. BROOKE, Mr. President, I support House Joint Resolution 208, the equal rights amendment, presently before us, and believe it should be promptly passed without qualification or change.

The amendment—in 24 simple words—"equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex," gives the women of this country the per-

sonal magna carta they have sought for so long. They seek nothing more than equality. They deserve no less.

Women now outnumber men; they comprise 53 percent of our population. But despite their number, despite their suffrage, the doors of equal opportunity have been shut to them since before the American Revolution. In State after State—instance after instance—the law itself discriminates against them: here, women cannot own property or do business without their husband's—and in some cases the court's—consent. There, a woman cannot get a loan at a bank, sign a lease or invest her own money without her husband's consent. Millions of women in the labor force do not receive social security benefits equal to their payments into the fund if their husband also receives social security. The women who serve in the military do not receive housing allowances and health benefits for their dependents. Women can be, and are, sentenced to far harsher prison terms for an offense which would earn a much lighter sentence if committed by a man.

Many of the laws which "protect" women did, in fact, perform that necessary function 50, 60, or 70 years ago when the sweatshop and the blatant exploitation of women and children were a reality. Tens of thousands of those women were immigrants, newly arrived in this country, unfamiliar with our laws, and desperate for income to support themselves and their families. Unions were in their infant stage, almost impotent. Wages and hours legislation had not been enacted for all our people. Government, at every level, had to throw its weight into the scales as the ally of women and children who had no vote and were powerless to protect themselves.

What was designed to liberate and succor, generations ago, shackles today.

The growth of unions, the economic floor which wages and hours legislation has placed under all workers, an alert media and the public conscience now make most of these unnecessary.

They are, in fact, a roadblock to the realization of the equal-pay-for-equal-work concept.

The statistics condemn the status quo: On an average, families with male heads had an income of \$7,783 in 1969; families with female heads had an average income of \$4,007.

Only 3 percent of workingwomen earn more than \$10,000 per year; yet 26 percent of workingmen earn over \$10,000 per year.

One hunts through the professions—business, industry—in vain, for enlightenment in regard to the status of women. Look at education, for example.

Women in the teaching profession are consistently relegated to the less demanding, lower paying positions as elementary and secondary school teachers. Only 10 percent of women college teachers attain the rank of full professor, while 50 percent of the male teachers do so. Women average \$576 less per year at the rank of assistant professor; \$742 less per year as associate professors; and \$1,119 less per year as full professors. Yet 91 percent of all the women in

this country with Ph. D.'s are working today—81 percent of them full time.

I wish I could exempt my own profession—the law, from this indictment. I cannot. It is no accident that there are so few women judges. Or that so few women lawyers become partners in the prestigious, affluent law firms of this country.

Mr. President, it is time to call a halt. It is time for Congress to redress the balance. The adoption of this amendment would help to do that.

There are some ancillary benefits for men which will flow from enactment of this amendment—paying alimony to a woman who is self-supporting will become a thing of the past. Men will also inherit and enjoy the same protection which is now afforded to women in business and industry.

But what of the women who desire no change in their present status? Women who want to be mothers and housewives rather than "breadwinners." Women who have always been dependent upon a husband's earned income, retirement pay or survivors' benefits. Women who do not want to invest or own property in their own name.

Those women can rest easy. Those who prefer or elect to retain the status quo may do so. But for most of the 42 percent of American women who are in the work force in some capacity, for the many millions of American women who are single and self-supporting or who are the sole support of other dependents, this amendment guarantees new opportunity and that most elementary but elusive status: equality.

No longer will they be denied the opportunity to hold a job simply because they are women. No longer will they be denied loans, access to housing or other benefits solely on the grounds that they are women.

Equal rights for women is long overdue. I applaud this amendment and support its passage.

Mr. DOLE. Mr. President, this is a significant day for America. After more than a half century, Congress has approved the constitutional corollary of the 13th, 14th, and 15th amendments which guarantee equality of rights to all citizens, regardless of race, and it has brought to full force the spirit of the 19th amendment which extended universal suffrage to all citizens, regardless of sex. Congress has passed the equal rights amendment proclaiming that women are full and equal citizens of this great Nation.

I note this day with a particular sense of its historic importance for the State of Kansas and the Republican Party. I do so because the equal rights amendment was first proposed in Congress by Charles Curtis, a great American who was elected Vice President under President Herbert Hoover. He was also a great Kansan, who devoted virtually his entire adult life to public service through six terms in the House of Representatives and four terms in the Senate. And he was a great Republican, who, in addition to his national offices, was majority leader of his party in the Senate and a widely respected and admired Republican leader on the national level.

The language of Senator Curtis' amendment was as follows:

Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have the power to enforce this article by appropriate legislation.

When Senator Curtis introduced the equal rights amendments in 1923, he drew attention, both for Kansans and Republicans, to a solid and forthright position in the cause of women's rights. This position has been maintained and built upon throughout the years, and today I know the Republican Party and the people of Kansas appreciate the significance of having Senator Curtis' initiative fulfilled.

But more than being merely a matter of State or party pride, passage of the equal-rights amendment should be a source of strong national satisfaction in seeing a major step toward the extinction of a fundamental and far-reaching shortcoming in our legal and social systems. This step has been long in coming, but it has at last been taken.

Now we must look ahead. The job has been passed to the legislatures of the States. I am hopeful they will respond as they did last year when the amendment providing for the 18-year-old vote was ratified with the utmost dispatch and regard for the importance of its contents.

More work is in store, but today's action establishes a milestone in the history of women's rights and the rights of the individual. Congressional approval has been secured, and women and men—Americans—can now look ahead to the day when the equal rights amendment will be known by another and more significant name: the 27th amendment to the U.S. Constitution.

Mr. STEVENSON. Mr. President, this is the 50th year that the equal rights amendment has been before the Senate, it having been introduced in every Congress since 1923. Numerous committee hearings have been held over the years, and the amendment has been debated on the floor several times. It has now been debated again in the Senate over the last several days.

As a cosponsor of this amendment, I would like to reiterate my support.

There is but one principle involved, although, as is clear from the discussions, the ramifications are many and varied.

The principle is that sex, by and of itself, cannot be used as a classification to deny or abridge any person of his or her equal rights under the law. This, of course, is more than a mere negative statement that henceforth there can be no legally sanctioned discrimination against women. The amendment should accomplish that, but it will do more. It will tell the Federal Government and the governments of the several States that in all their laws they must set up reasonable distinctions and qualifications based not on the overbroad categorization of sex, but rather on the characteristics of individuals. Certainly, for example, if an occupation requires a basic level of physical fitness, that level can still be required, and it may be that women will not be able to meet those physical qualifications and that men will. Or vice versa. But, under the law it will no longer be acceptable to say that sex by and

of itself is a reasonable factor by which to say that an individual will not be able to hold that job. A man or woman will no longer be denied the right to hold that job, to "pursue happiness," simply because of his or her sex. The burden will be on the State to show that a particular individual does not possess the physical qualities necessary to function in the job.

How the courts and judges of the future will interpret the infinite sets of factual situations which will confront them is not, and can not, be known to us. Similarly, in 1868 it could not be known that within 30 years the Supreme Court would hold that "separate but equal" facilities for blacks and whites would not violate the equal protection of the laws, or that in 1954 the Supreme Court would reverse that initial decision.

What we are doing is enunciating a principle in the Constitution of the United States. There are and will be classifications based on sex which will be held not to deny or abridge any particular individual's equal rights. Indeed, such classifications will be necessary in some cases to assure the individual's constitutional right to privacy. But where such a classification does impinge on an individual's equal rights under the law, there will now be a firm constitutional basis for the courts to end the discrimination.

The 19th amendment, of course, uses language similar to the equal rights amendment when it says that:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

The State of Illinois was the first State to ratify that amendment.

Section 18 of article I of the new Illinois constitution, which became effective last July 1, upholds a principle similar to that of the proposed equal rights amendment:

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

Illinois is one of only three States to have enshrined this principle in its Constitution.

As a Senator from Illinois, therefore, I feel that I am acting within the traditions of my State as I lend support to the equal rights amendment. The Constitution does not give Congress the final say on constitutional change. Illinois may yet speak again on this issue, this time in its largest context. It is now time to let Illinois, and every State, have that final say.

Mr. TOWER. Mr. President, I rise today in unequivocal support of the equal rights amendment. We have been discussing this matter for some time now and I believe that the time has come for those of us here in the Senate to affirm our support of this amendment and pass the question on to the States, so that they, acting collectively, may finally be able to decide the issue.

I am convinced that we in the United States are not making anything near maximum utilization of the resource we have in our women. From the standpoint of their intellects, their talents, and their capabilities, given the opportunity, women, in many instances, excel

at jobs that are traditionally held to be men's jobs.

As a working politician, I have witnessed the effectiveness of women in politics and am more than impressed. In my own instance, I have appointed a woman as my campaign manager. So far as I know, I am the only major statewide candidate in the country to entrust the future of his or her career to a woman. Both of my Texas offices are managed by women. These responsibilities and the commensurate authority, I have delegated to them, not because they are women, but because they have earned it. They have taught me that the traditional taboos against women in such jobs are to be ignored.

Mr. President, I believe that the most certain way in which women's rights can be fully guaranteed is to pass a constitutional amendment. We have tried several times in this decade to resolve this matter by legislation, yet sex discrimination continues to prevail in all too many fields. In 1938, we passed a very significant piece of legislation to guarantee women equal rights in jobs and pay. The Fair Labor Standards Act specifically prohibited an employer from discriminating on the basis of sex in payment of wages for equal work and equal jobs in equal working conditions. In the Civil Rights Act of 1964, we passed an even more important law dealing with equal employment opportunity. Title VII of that act prohibited discrimination in employment by any major firm engaged in interstate commerce. Also covered were labor organizations and employment services. In addition to such Federal laws, there are numerous State laws banning sex discrimination. For example, 35 States have enacted equal pay laws; 16 have adopted fair labor employment laws which specifically include women.

In theory, then, there would appear to be ample guarantee that a woman with the same qualifications as a man should be considered equally with that man for a particular position, that she should receive the same pay and have the same chances for advancement. In practice, however, this has simply not been the case. In 1970, there were 31 million women in America's labor force—or 38 percent of the total number of workers. This represents an increase during the last few decades and, therefore, a fuller use of our Nation's labor potential. Women over 16 are concentrated in the field of clerical work. In fact, this constitutes about 34 percent of the women's working force. Since this field is commonly grouped with white collar jobs, and since white collar jobs often are more remunerative than blue collar work, the large number of women clerical workers would appear to be in a good economic position. However, the median wage of full-time, year-round clerical workers who are women was \$4,789 in 1968, while men in this field were earning \$7,351.

Unfortunately, the situation is not improving over time despite the enactment of clearly worded legislation. In 1955, the median salary for full-time, year-round workers was \$2,719 for women and \$4,252 for men. Women were

then receiving 63 percent of what men were earning. In 1968, the median salary for women increased in real terms to \$4,457; however, that of men had reached \$7,664. Speaking in terms of median wage, women in 1968 received only 58.2 percent of what men were earning—a decrease of nearly 5 percent.

One traditional and important field for women in past years has been teaching; it seems somewhat easier to combine this career with family life. Even here, however, there appears to be bias. The National Education Association found that in 1965-66 the median wage for women who were members of teaching staffs in colleges was less than that of men on all professional levels. In fact, women who were full professors had a median annual salary of \$11,649 and men, \$12,768.

In overall occupational patterns, the position of women in the labor force has deteriorated in recent years. Since the period before World War II, women have become increasingly concentrated in service trades and clerical work; however, their position in professional and technical work areas has become worse over the years—in fact, it dropped from 45 percent in 1940 to 38 percent in 1968. If there were a substantial rationale for such differences in occupations and salary levels, there might be some justification for the existing situation. Instead, more education and more freedom from homemaking tasks indicate the position of women in the labor force should have improved over time.

Also, women have tended to show up as well or better than men in time-on-the-job studies, and their turnover rates are comparable to men's. In fact, women show less tendency to leave jobs as they acquire higher responsibility.

In another important area, we also find evidence which tends to show a biased treatment of the female—education. Education is a major key to individual success in our society, besides being vital to our technological, sociological and psychological progress as a nation. Hearings before the House Special Subcommittee on Education have indicated that higher levels of previous achievements are required of women in order to gain admission to a college or university. In fact, many schools admit fixed proportions of men and women each year—in favor of men.

The courts have not been of much assistance in solving the discrimination problem in either labor or education. Women's work rights have generally not been considered to be covered under the "equal protection" clause. In *Muller* against Oregon, a leading 1908 Supreme Court case, the Court upheld a limitation on the number of hours a woman could work in a bakery, declaring that sex was a valid basis for classification. Not until passage of the Civil Rights Act of 1964 was this doctrine seriously challenged; however, the EEOC, which has the authority to enforce title VII of the act, has not been very successful to date in winning court cases which it has initiated in response to specific complaints. Only recently has the Supreme Court

agreed to hear a title VII case. Likewise, just a few weeks ago the Supreme Court upheld an Alabama law which prohibits a married woman from obtaining a driver's license in any but her married name.

Mr. President, this recognition of the equal civil rights of women coming as it is over 50 years after the adoption of the women's political rights amendment, is long overdue. Another very basic right this amendment will secure for women is the basic right to contract in their own behalf. It will make certain that women will have full contractual rights with their male counterparts. In our free society, as in any truly free society, contractual rights are a basic ingredient in the freedom syndrome. Clearly, if one is not free to contract as he sees fit, within broadly based public policy limits, then freedom is illusory. I hope that, at this hour in time, we here in the Congress will remove the last vestiges of restrictions on women's civil rights and give this amendment the approval that should have been forthcoming from this great body during the last Congress.

In spite of some of the dire predictions that have been made, I do not feel that any earth-shattering disruptions will come from this amendment. In our system of Anglo-Saxon justice, the most prevalent of all our rules is the rule of reason. All changes that come about will, and should, be in our historical perspective. I have faith in our system, and know that we will do the right thing at the right time.

What we are in effect doing here, Mr. President, is continuing along the historical process of women's equality. As I have stated, this amendment will allow the States, collectively, to decide the issue once and for all. In this way, the legislatures in every State will have the opportunity to fully consult with their constituents and make a separate judgment on the merits of the amendment. This is part of the checks and balances of our constitutional system that has sustained us for so long. When the results are in, I have little doubt that this amendment will be ratified, most probably in record time.

In conclusion, Mr. President, I am pleased to have had a small part in helping to bring about the consideration of this amendment before this body. I hope that it will be quickly sent to the States for their consideration and ratification. Let us proclaim that in 1972 women in America have achieved full equality with men.

Mr. SPARKMAN. Mr. President, I rise in support of the joint resolution proposing an amendment to the Constitution relating to equal rights for men and women. I am proud to remind the Senate that I am an enthusiastic cosponsor of that measure.

I think the time has come for the Senate to go on record. By passing the Senate joint resolution, we are not saying that a woman's place is not in the home. We simply wish to say to the Nation—men and women alike—that if a woman wants to bake bread and garden, that is her choice.

If she wants to be an aerospace engi-

neer or a banker—then she has the right to her choice and full equality in the pursuit of her profession. If she wants to design machinery or become an architect, then she should be able to do so and with the same pay and the same opportunities as a man.

In a nation where equal protection under the law is one of our basic foundations, women too often have been neither equal nor protected.

She has been and is being short-changed by archaic work laws, by property laws, by limitations that sometimes even make her unemployable. This certainly is one reason why unemployment among women has been so high. The time is now to bring women more into the mainstream of economic life and to seek for her the same quality of life we seek for the Nation as a whole.

We have come a long way in recent years in the field of women's rights, but we have many inequities to overcome before women can share in the general advances in our society.

Some State laws preserve inequities based on social attitudes of 50 years or a century ago. For example, in four States in order to set up her own business, a woman must go to court to prove her fitness. Many States have laws restricting the working hours of women—which prevents them earning the same extra money through overtime that men do. Several States have arbitrary laws stopping a woman from working before or after childbirth regardless of her or her employer's wishes in the matter. Some property and inheritance laws are basically discriminatory against women. Additionally, many States have rules that women may not hold certain jobs or enter certain professions.

In our own Federal Government, Foreign Service wives for almost 200 years were governed by a strict set of rules although they were not employees of the Federal Government. Just this year the State Department has issued welcome new rules for the wives of State, AID, and USIS employees stating that wives could hold jobs or pursue careers abroad, that certain duties cannot be levied on them against their will, and that evaluation of wives' participation or lack of participation in volunteer or other activities cannot be used in the performance evaluation reports of their husbands.

Women hold more property and control three-fourths of all consumer spending in this country. Yet in private enterprise, we find few women in management or positions of power. In fact, a smaller number of top echelon professional jobs are held by American women than in any other developed country in the world.

Only 9 percent of American doctors are women—compared to 50 percent in Russia and 18 to 25 percent in the Western European countries. Only 3 percent of all lawyers are women and only two percent of the judges in the United States. Proportionately, there are more women physicists in Italy than in the United States.

Although education is one field in which women have done particularly well, only 10 percent of college professors

are women. Women tend to be held to the elementary and secondary level, and few are promoted to administrative positions. Last year at the Harvard School of Education, where 65 percent of the students are women, only 12 women were on the faculty of 185.

Clearly, the time has come to go on record in favor of equal pay for equal work, for equal opportunity, and equal participation in our national life, and for an end to some of the anachronisms of law regarding women.

Mr. President, various actions on this subject have been introduced in the Congress over the decades, and every President since President Eisenhower has endorsed the equal rights proposal.

About a dozen States have taken official action already in support of the pending amendment, which has received endorsement by such varied organizations as the American Association of College Deans, the National Association of Women Lawyers, the National Education Association, the National Federation of Business and Professional Women's Clubs, and the United Automobile Workers.

Mr. President, I urge my colleagues to join me in support of the Senate joint resolution.

Mr. TUNNEY. Mr. President, I wholeheartedly support the equal rights amendment which provides in part "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

My colleagues, the junior Senators from Indiana and Kentucky are to be congratulated for their careful and articulate campaign to convince us all that this provision—which has been pending before this body in various forms for the past 50 years—was long overdue and crucial to end various forms of direct and invidious discrimination against a majority of the population of this country: women.

I think it is no longer questioned—and it is amply documented by the Senate hearings in 1970 and the House hearings in 1971—that women are not afforded equal protection under the laws of the United States or by our institutions. Resolutions proposing an equal rights amendment have been introduced in every Congress since 1923, and the amendment for which I vote today was passed without any amendments by the House of Representatives. It is high time for the Senate to cast its vote to assure equality of legal rights for all our citizens.

Accepting the fact that discrimination against women does exist, many people still argue that a constitutional amendment is an inappropriate remedy. First, they say, such an amendment is unnecessary. I disagree. It is true that the 14th amendment, by its terms, guarantees equal protection under the law, but the courts have not interpreted the 14th amendment to protect women from many forms of discrimination. As it was ably stated by "Women United":

The question is not whether the 14th Amendment could provide protection for the rights of women, but whether it has been

interpreted to protect women from discrimination. It has been the contention of equal rights advocates that the equal protection clause should be extended to women. Granted, there has been some progress through recent judicial actions to eliminate sex discrimination. No woman seeking protection of her rights under the 14th Amendment ever won a case before the Supreme Court until 1971, when the court struck down a state law which favored men over women administrators of estates. That case, however, was narrowly confined to its facts. (Reed v. Reed, No. 70-4, November 22, 1971). Unless legislators, by adopting the "era," express their firm conviction that reform must be vigorously undertaken, progress will be slow and costly, with no guarantee of success. It is the highest type of discrimination to require that women assert their rights under the 14th Amendment by having issues of discrimination adjudicated on a case-by-case basis.

I concede that, if the courts were to move forward with regard to interpreting the 14th amendment to afford true equal protection for women, this new amendment could be redundant. Even so, the enactment of this amendment will symbolize and emphasize this country's dedication to providing true equality for all. This sort of dedication cannot be emphasized enough, and I feel it appropriate to include it in our Constitution.

I think that the literature and my colleagues who have been so outspoken on this issue have said about all one could say on the specifics and importance and ramifications of this amendment. I will just add one more voice to theirs: "We must wait no longer to remove this last barrier to equality in our Nation." In this country which prides itself on the freedoms that its people have, it is an outrage that we have waited this long to grant women truly equal treatment under law.

In conclusion, let us take equal treatment under law as a first step, and move on to eliminate the other subtle forms of social and personal discrimination against women that derive from socially ingrained ideas about the woman's proper role. These notions, too, have kept women from developing their full potential. The enactment of the equal rights amendment will go a long way toward providing the kind of dignity and legal status to which every American is entitled: I pledge myself to go even further.

Mr. GAMBRELL. Mr. President. Having made a careful study of the proposed equal rights amendment to the U.S. Constitution, I have concluded that I will vote in favor of its passage through the U.S. Senate. The study leading up to this decision has caused me considerable concern. I have serious reservations about the desirability of this constitutional amendment which might have prompted me to vote against it if passage by Congress insured its adoption. Fortunately, the drafters of our Constitution provided that Congress can only propose amendments to it, and that ratification by three-fourths of the States before an amendment becomes law. If the Senate passes this amendment and consideration of it moves on to the local level, I trust that the people of this country, and especially the women of this country, will

fully inform themselves on the consequences of enactment, and will then either support or reject it on that basis.

Careful investigation of the subject reveals that the precise meaning of the amendment in regard to responsibilities of women—as distinguished from rights—and on the legal effect of the amendment with respect to domestic relations and the obligations of support within the family is unclear.

A wide variety of specific questions in these areas are dealt with in the article, "A Constitutional Basis for Equal Rights for Women" Yale Law Journal 871 (1971) by Professors Brown, Emerson, Falk, and Friedman. To mention a few such as marriage, divorce, sexual relations, support and custody of children, and alimony, will illustrate that these issues are not insubstantial.

The amendment is phrased in terms of "equality of rights". However, many authorities suggest that equality of responsibility is also contemplated. Some even go so far as to suggest that sexual identity shall not be recognized in any respect under the law. To me this seems as foolish as to say that no law may take cognizance of the difference between night and day. Permitting laws which recognize this difference is not to say that either night or day is superior, but is simply to recognize that they are not the same.

In regard to the important subject of domestic relations, and the obligations of support within the family, even the Senate Judiciary Committee report is ambiguous. The majority report of the committee states that the ERA "may" have an effect on domestic relations laws, and that courts "probably" would be reluctant to alter the obligations of support within the family. In other words, the family relationship, which is the cornerstone of our society, may have to fly blind until the courts have had an opportunity to define the meaning of the amendment.

Frankly, I do not think that a majority of women, and certainly not of men, in this country want the law to be required to ignore the differences between men and women and I do not so interpret the amendment. At the same time, I think the majority of American men and women support the elimination of discrimination against women, purely on the basis of sex, in areas where an individual's sex is immaterial. The Supreme Court of the United States has, in fact, held this to be the law at present under the Constitution of the United States, Reed against Reed — U.S. — 40 U.S. Law Week 4013 (1971). Legislation now could be enacted pursuant to the 14th amendment of the U.S. Constitution which would implement women's rights in this respect. On this basis, I have supported and voted for the Equal Employment Opportunities Act of 1972, and could support other similar legislation.

At the same time, I can appreciate that the enactment of an appropriate constitutional amendment might accelerate the elimination of invidious sex discrimination in areas where it now exists.

But according to many authorities, the

equal rights amendment in the form now presented, goes much further than this.

Many women with whom I have discussed the matter, upon being informed of the amendment's potential in the areas which I have mentioned, are inclined to oppose it.

As the matter now stands, I am faced with the obligation of voting on a constitutional proposal, the meaning of which is in question. Yet, the proposal has twice previously received overwhelming support from the House of Representatives, and is heavily favored in the U.S. Senate. Furthermore, it has the ardent support of organized women, although many of them seem to be poorly informed on the legal consequences of the proposal they advocate.

Possibly a happy solution would be to submit the proposal to a referendum among women, before permitting it to become law. However, we do not have this option at the present time.

All things considered, I have concluded that I should not stand in the way of permitting the amendment to be submitted for ratification or rejection at the local level. Therefore, I have concluded to vote for passage of the amendment. However, my vote for its passage through the U.S. Senate, is certainly not a vote in favor of it, without regard to its meaning and regardless of whether the people want it or not.

To me the amendment means that legal distinctions based solely upon sex are prohibited, except in instances where sex as such is the matter under consideration.

Such a change in our fundamental law is the people's business, and a matter for them to decide at the local level. If the amendment, fully understood, is what the American people want, then I will not use my vote in Congress to deny it to them.

Mr. FULBRIGHT. Mr. President, I want the record to reflect my strong support for House Joint Resolution 208, the proposed constitutional amendment insuring equal rights for women. I have actively supported and cosponsored this measure for many years, and I am quite pleased to be able to join the overwhelming majority of Senators who have shown by their vote today the recognition of the justness of the basic principle of this amendment: that sex is not an allowable determinant of the legal rights of men or women. Particularly significant in our action today is that we in Congress, after 49 years of debate, have cleared for the States an undiluted amendment to the Constitution stating simply that:

Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.

Opponents of this amendment have said that the ERA will bring about too many changes in our society. While it is true that some changes will occur once the amendment has been ratified, it is also true that the changes destined to occur have been needed for a long time. Many questions have been raised expressing fears which are based upon what I believe to be misconceptions about House Joint Resolution 208. These questions have been answered most per-

suasively in each instance. The public record on this measure is quite complete, and I am personally satisfied that the changes which we can look forward to are those which will have a healthy effect upon the fabric of our society. With the passage of this amendment, Mr. President, we will not be forcing social change, but rather we will be helping to provide the legal framework for change that is both just and responsive to the needs and requests of a majority of American citizens.

Mr. HARTKE. Mr. President, although it has been 50 years since women in this country achieved political equality with men, there has not yet been complete realization of equality between the sexes.

For most of that half century, a constitutional amendment which would guarantee such full equality has been before the Congress. Introduced first in 1923 and revised in 1943, I am proud to be the present sponsor of the equal rights amendment which first received the support of the Senate Judiciary Committee 28 years ago and which in 1970 received the overwhelming support of the House.

The substance of the equal rights amendment is contained in the following sentence:

Equality of rights under the law shall not be denied or abridged by the United States on account of sex.

Some maintain that such a constitutional amendment is unnecessary and would represent a "constitutional frill." While the 14th amendment has proved an effective tool for combating discrimination against members of certain groups, notably racial minorities, the Supreme Court has not extended this tool to combat sex discrimination.

That there is a need for the equal rights amendment cannot be disputed. The most indifferent survey of State and Federal laws reveals a dark, insidious pattern of discrimination. For example, laws and practices operating to exclude women from State colleges and universities; dual pay schedules for men and women performing the same jobs; State laws placing restrictions on the legal capacity of married women or on their right to establish a legal domicile; State laws which require married women, but not married men, to go through a formal procedure of obtaining court approval before they may engage in independent business; social security and other social benefits legislation which give greater benefits to one sex than to the other; and areas of family law, military law, and labor law in which women are treated differently from men. Each of these instances of discriminating laws and practices can be abolished one by one, but there is no adequate substitute for a constitutional guarantee against prejudice.

Unfair laws do not create discrimination but merely reflect it. Society and, in this case, men, act out their prejudices by enacting discriminatory laws. The discrimination exists before the law and is reflected in the place which women occupy in our society. In industry and in Government, in the home and in the office, women are paid less, hired last, promoted least and given the least de-

manding work. Statistics as well as statutes reveal the same sad discriminatory pattern and this is so even though women are now a vital part of the economy. Today, 31 million American working women represent 38 percent of the U.S. work force. Despite the growing number of working women and the enactment of various legislation such as the Equal Pay Act and the Civil Rights Act relating specifically to sex discrimination in employment, economic discrimination against women is worsening, not improving.

In 1955, the median salary of full-time, year-round workers was \$2,719 for women and \$4,252 for men. Women were thus receiving only 63.9 percent of what their male counterparts received. In 1968, while the median salary for women workers had increased to \$4,457, that of men had reached \$7,664. In other words, women in 1968 received only 58.2 percent of what their male counterparts earned.

Even in fields traditionally associated with women, such as teaching, the economic bias persists. The National Education Association found that in 1965-66 the median wage of women who were members of college teaching staffs was less than half that of men on all professional levels.

Women suffer from discrimination not only in the money they receive, but also in the jobs they are offered. There is not only a money gap, but also a professional gap. Few women have been allowed to enter the professions. Only 1 percent of Federal judges are women, only 1 percent of engineers are women. Despite greater education for women and more freedom from household tasks, women's job opportunities have declined. In 1940, women constituted 40 percent of the professional and technical work force, but by 1968, they constituted only 30 percent. Once again, we see that the problem is getting worse, not better.

The Equal Rights Amendment which I have proposed has often been reported favorably by the Senate Judiciary Committee, most recently in 1964. It has twice passed the Senate, in 1950 and in 1953, and in 1970 it had the support of 87 Senators. Because of the discussion on this proposal in the 91st Congress, some have suggested that changes be made in the amendment which will assure its passage. In fact, Senate Joint Resolution 8 and 9, and House Joint Resolution 208 embody those suggested changes. I oppose such changes as being unnecessary.

The primary issue is in regard to State enforcement. When the Equal Rights Amendment was first introduced in 1923, the enforcement clause read:

Congress shall have power to enforce this article by appropriate legislation.

This wording of the enforcement clause was adhered to in the resolutions on the Equal Rights Amendment introduced from 1923 to 1943. In 1943, the Senate Judiciary Committee voted to change the enforcement clause by extending the enforcing power to the several States. The enforcement clause as changed by the 1943 Judiciary Committee read:

Congress and the several States shall have the power, within their respective jurisdictions, to enforce this article by appropriate legislation.

The reference to State enforcement was the major change embodied in this revision. In its report, the committee commented on its reasons for opposing the original clause which restricted enforcement to the Federal level—

First, it envisioned geographic uniformity throughout the United States.

Second, it tended to impair the right of each of the several States to determine for itself its public policy.

Third, it surrendered to the Federal Government the power to enforce the article within the several States by appropriate legislation notwithstanding its effect upon such local statutes as those governing—

The title, transfer, and descent of real estate;

Community property;

Domicile;

Public morals, health, and welfare;

Domestic relations; and

Police power.

I see no reason for changing the wording of the enforcement clause.

The clause serves two important functions. In the first place it gives power to both Congress and the State legislatures to pass affirmative legislation implementing the substantive provisions of the equal rights amendment. Provisions of this nature, such as those embodied in the 13th, 14th and 15th amendments, have come to be important in legislative efforts to enforce the rights guaranteed. The Federal and State governments must, of course, exercise the powers conferred "within their respective jurisdictions."

In the second place the provision is designed to avoid the possibility that the conferring of power upon the Federal legislature will exclude the exercise of State power to implement the amendment. As we know, the Supreme Court has sometimes held that the existence of Federal power in a certain area precludes the States from legislating in that area, even though the Federal power has not actually been exercised. In the case of the equal rights amendment, it is clear that many of the problems in assuring equal rights for women will arise in areas where the States have primary jurisdiction, such as marriage and divorce, property, welfare and the like. It is important therefore, that, although Congress should be given full power to enforce the amendment, the grant of such power to the Federal Government be not construed to preempt the States from legislating.

It will be noted that, in the only other recent amendment which posed a similar question of assuring the continuance of State power—namely the 18th amendment enacting prohibition—a similar provision was included.

Of course, if there is a conflict between legislation passed by Congress and legislation passed by a State, the Federal law takes precedence under the supremacy clause. In the absence of such a conflict, however, the equal rights amendment establishes that the States and the Federal Government have concurrent jurisdiction.

Some have suggested that the provision quoted above might be subject to two interpretations which "would obstruct, not advance, the purposes of the amendment." It is my opinion that such concern is unnecessary. Dean Lewis Pollak of Yale Law School, first voiced such concern in 1970. He believes that Federal courts might read this cause as requiring the same degree of judicial deference to State statutes purporting to implement the amendments as would normally be given to Federal statutes implementing the amendment; and "this could mean that the parochial—and, as might often be the case, mutually inconsistent—statutes of State legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this amendment."

I agree with Professor Emerson's response to Dean Pollack. Professor Emerson stated:

I do not follow the reasoning on this. There is no constitutional doctrine that the Supreme Court gives less deference to action of State legislatures than it does to action of the Federal legislature. To the extent that any such result obtains in practice, it is due to basic factors inherent in the nature of the Federal system and the function of the Supreme Court. I cannot believe that the Supreme Court would alter its attitude or position on these matters because of a faint, hidden implication in the concurrent jurisdiction clause of the Equal Rights Amendment. Only an explicit command could effectuate such a basic alteration of constitutional law and practice.

The arguments made by Dean Pollak are well worth considering. They have convinced a number of constitutional scholars within the past year. Nonetheless, it is still my contention that such fears can be overcome by developing the proper legislative history stressing that my version of the equal rights amendment is not to preempt the Federal Government from acting to enforce the amendment but to avoid the possibility that the conferring of power upon the Federal legislature will exclude the exercise of State powers to implement the amendment.

Another difference between the current resolution pending on the floor and the traditional equal rights amendment is a requirement that the amendment be ratified within 7 years and that, if ratified, it not take effect until 2 years from the date of ratification. Only four of the 25 amendments adopted so far have contained a requirement that they be ratified within 7 years, and none of the adopted amendments has included a stipulation that it not take effect until 2 years following ratification.

No such provision appears in the 19th amendment establishing women's suffrage, the one most comparable to the traditional equal rights amendment. Nor does any such provision appear in the last three amendments adopted—the 23, 24, and 25. It seems clear that the 7-year limitation has not been considered necessary in the past. Furthermore, the assumption that the States will act within a 7-year period may well be erroneous.

If the States follow the Congress' ex-

ample in action on the equal rights amendment, it is quite unlikely that the equal rights amendment will be ratified within 7 years. If there is such a delay, then we must begin the entire process once again. I think that the women who have been involved in the equal rights struggle for any length of time can easily document the delay and procrastination they have encountered in their efforts to secure equality for women.

In addition, the clause stating that the effective date of the equal rights amendment should be 2 years from the date of ratification rather than 1 year, is unnecessary. The only prior amendment that has had a limitation on its effective date is the 18th amendment and that was 1 year. There is no reason why 1 year should not suffice in the case of the equal rights amendment.

The traditional amendment's provision for a 1-year period is adequate since both State and Federal legislatures would have time to conform their laws during the ratification process. It should be stressed that, just as a Governor can convene the legislature for the sole purpose of acting on State matters, he has the same authority to convene a special session of the State legislature for the purpose of conforming State statutes with the equal rights amendment. In fact, it would probably be more appropriate to convene such a session rather than attempting to change such discriminatory laws during the normal course of legislative business.

Mr. President, during the past year I have been contacted by many women concerned with the passage of the equal rights amendment. Some of them have worked for decades in its behalf. They have endured frustration and delay, but they have remained undefeated and undaunted. In 1970, when the amendment passed the House and had 87 sponsors in the Senate, they watched in disbelief as their efforts came to naught.

Following that disappointment, they watched as the wording of the amendment—wording which had survived more than 20 years of testing—was altered to suit some of the arguments first raised by its opponents. They have watched as many in the House voted for the newly revised amendment thinking that it was the traditional amendment. Today, I join with these women in sharing a sense of frustration and dismay.

Mr. President, I support the traditional amendment and oppose any substitute to it. There can be no substitute for justice. What women want is equality, nothing more, nothing less. I urge the Senate to respond unanimously to this longstanding call to justice.

Mr. SYMINGTON. Mr. President—

Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.

This statement of principle proposed to be embodied in the Constitution, presages a national and concrete commitment for the equal treatment under law of men and women.

The equal rights amendment concerns legal rights, not private courtesies. In their 1970 report the Missouri Commission on the Status of Women emphasized that:

It is equal legal rights, equality under the law, women are seeking—not to be men or to replace them. Too often equality has been mistaken for sameness.

A St. Louis Post-Dispatch editorial comment is worth repeating:

... women's equality has nothing to do with opening doors for them or lighting their cigarettes. Such acts symbolize respect, which equality need not destroy. Nor does equality mean that women, in order to be equal, must be able to perform the rigorous physical labors. After all, many men can't. Women's equality has its immediate applications in the area of job accessibility and salaries, but in the broader context it seeks to assure the breadth of opportunity for self-fulfillment that men now enjoy. It has nothing to do with sameness, and if it ever should the game is up.

To be sure some progress, old and new, has been made in long efforts to improve the status of women.

In 1919 the 19th amendment gave women the right to vote. In 1964 title VII of the Civil Rights Act barred discrimination against women in employment where sex was not a bona fide employment qualification.

Despite these and other changes that have been made in both Federal and some State laws, arbitrary classifications persist in most jurisdictions. As example, in some States women are subject to heavier prison penalties than men for commission of the same criminal offense.

In many States, protective labor laws bar women from certain types of occupations or limit the hours or conditions of employment. Although these laws were well-intentioned, the Equal Employment Opportunities Commission has found that their tendency is to discriminate and restrict opportunities rather than to protect women.

I believe women as well as men should have the right to seek those situations in life for which, as individuals, they are qualified. This concept is at the core of the equal rights amendment and admittedly it presents difficulties in its application to military service.

Whereas women now volunteer and serve admirably in the military services, they do so under limitations as to number; also educational and age requirements are different for women than for men.

It is necessary to recognize that equal rights mean also equal responsibilities. This is not to say, however, that all women would be required to undertake military tasks for which they as individuals might not be suited, any more than all men meet the standards required for induction or for particular assignments.

The duties of citizenship should not be considered any less for young women than for young men; else, as Prof. Norman Dorsen of New York University Law School told the Senate Judiciary Committee, the unequal obligations suggest an inferior status for women:

When women are excluded from the draft—the most serious and onerous duty of citizenship—their status is generally reduced. The social stereotype is that women should be less concerned with the affairs of the world than men. Our political choices and our political debate often reflect the belief that men who have fought for their country have a special qualification or right

to wield political power and make political decisions.

Still another positive aspect concerns fairness in affording women who desire to volunteer to do so and to thereby earn benefits that flow from military service. As example, there are educational benefits under the GI bill, employment preferences inside and outside Government for veterans and also special advantages in home loans.

While the impact of the amendment on domestic relations and child support laws is another troubling area, I have been impressed by the reasoned statements of the Citizens Advisory Council on the Status of Women which support passage. The Council points out that:

... the Equal Rights Amendment would not deprive women of any enforceable rights of support and it would not weaken the father's obligation to support the family. Because it would require complete equality of treatment of the sexes, it might be used to require that the spouses in divided families contribute equally within their means to the support of the children so that the spouse with the children is not bearing the larger share of responsibility for support than the other spouse."

Inasmuch as State laws cover matters relating to marriage, grounds for divorce, property rights of widows and widowers and presumptions as to the parent preferred for child custody, it is well to remember that the Equal Rights Amendment requires the approval not only of two-thirds of the House and the Senate but also three-fourths of the State legislatures.

The ratification process will afford an excellent and needed opportunity for the States to consider the molding of present laws to conform to the greater realities of today's families and to the requirements of the Equal Rights Amendment.

I will vote for the Equal Rights Amendment because I believe it is a symbol needed now to assure that the fundamental law of the United States will afford women an equal opportunity for growth as individuals in accordance with their desires and capacities.

EQUAL RIGHTS—LONG OVERDUE

Mr. HUMPHREY. Mr. President, today is a great day for America. In the next few minutes the Senate will vote overwhelmingly to pass House Joint Resolution 208, the equal rights amendment.

The first equal rights amendment was introduced in the Congress in 1923 and has languished here ever since. The stage has been set since 1920, the year the 19th amendment gave women the vote. Since that time, women have strived to achieve full participation in all facets of American society. Now the time is long overdue for us in Congress to give women what they should have had all along—the rights of all citizens in America.

This afternoon, after 48 long years, we have the opportunity to guarantee their equal protection under the law by voting on final passage of the equal rights amendment.

The case for the amendment has been made clear. We can ill afford to do without the energies and abilities of half of our population. The time has come to

bring to the forefront of our national conscience the fact that a nation founded on justice can no longer relegate more than half its population to second-class citizenship.

The American dream—the dream of meaningful participation in all that society offers—must move from dream to reality. The women of America have been systematically excluded from full and meaningful participation. This discrimination tarnishes our Nation and its promise.

The great problem of women in America is a problem of access, alternatives, and opportunity. Women must receive equal pay for equal work. Women must have equal access to leadership positions in business and government. And millions of women—particularly minority women—must be provided with adequate job training so that their opportunities range far beyond domestic employment which often means dead-end jobs at the poverty level.

Today it is not enough that we talk of the Nation's "manpower" needs, we need womanpower as well. You know that when business is bad as it is today the people who are the most expendable are let go first. And all too often the "expendable" people are women.

The problem of women's rights is the problem of human rights. In order to achieve a truly just society, we must attack all aspects of discrimination. Discrimination on the basis of sex will not disappear immediately even with the passage of this amendment today. People will have to change the way they think about the roles of women and men in American society.

As that great American Lucy Stone said in 1855:

In education, in marriage . . . in everything, disappointment is the lot of the woman. I wish that women, instead of being walking show-cases, instead of begging of their fathers and brothers the last and gayest new bonnet, would ask of them their rights.

Today women are not asking, but finally demanding their full rights as citizens. Are we to remain insensitive to the injustices perpetuated against 104 million of our citizens? Let us begin to redress the injustices of the past by voting overwhelmingly for the passage of the equal rights amendment before us today.

EXPANDING FREEDOM: EQUAL RIGHTS FOR WOMEN; MOSS SUPPORTS EQUAL RIGHTS FOR WOMEN AND MEN

Mr. MOSS. Mr. President, the Senate now faces a rare opportunity to expand equality and liberty in this country. Most of our efforts to extend legal rights in recent years have been directed toward minority groups in our society. Today we have an opportunity to expand equality in the form of a constitutional amendment for the majority of our citizens—for women, who are 51 percent of our population.

Since this amendment was first introduced in 1923, the path toward its adoption has been strewn with parliamentary obstacles. Those have now been swept aside. If the Senate will adopt a constitutional amendment that does not require a conference with the other House, we can insure the passage of an equal rights

amendment in this Congress. We can be participants in a very historic event.

WHAT THIS AMENDMENT MEANS

Women face pervasive discrimination in employment practices. This amendment would help to open the occupational structure for those women who desire to work. At present, the median salary income of women is 59.5 percent the level received by men. In spite of the general impression held by the public, this income gap has actually been widening in recent years. It is this kind of discrimination that has led America's teachers to endorse the constitutional amendment by a vote of 83 percent.

Under present law, women are often paid less for jobs that appear to be identical to tasks performed by men. More important than this, however, is the fact that the upper occupational categories are often closed to women, not on the basis of ability, but simply on the basis of being a woman. Though universities are by no means unique, they are one example of this kind of discrimination.

Medical schools received applications from women at an increasing rate over the past three decades. The number of applications rose 300 percent from the period 1929-66. Yet admissions for women actually declined. The average amount of money per scholarship for female students is significantly less than that of male students. The picture does not get better at the graduate level. Many university programs openly discriminate against women in their admission policies. This amendment would mean that such university programs could only exclude women on the basis of qualifications that are applied equally among men and women. There are similar examples throughout society. Universities are by no means peculiar in this discrimination.

The legal rights of America's women would be significantly expanded by the adoption of this constitutional amendment. All married women would be able to hold ownership of personal property; amazingly, some States still prohibit a married woman from holding property in her own name. One State in our Nation imposes jail terms of 30 days on men who are convicted from some crimes, but applies a term of 3 years for women who are convicted on identical charges. This kind of blatant violation of basic equality will no longer be allowed once this constitutional amendment is adopted.

Many of us are now aware of the extensive roots of legal discrimination that still permeate the subsoil of our society. Some States still allow a man to use "passion killing" as a partial defense in court when he feels his marriage has been undone by the acts of his spouse, but do not allow the same defense by women who feel they have been wronged in the same fashion.

These laws often serve to protect men from competition in employment rather than to protect women, as the opponents of this amendment often suggest. When women are not allowed to work more than a limited number of hours in some States, and are barred from competing for jobs with certain lifting requirements in other States, then they are often frozen out of jobs. The limitation placed

on these jobs should not be stricken—they should simply be applied to both sexes rather than one. If a job has a requirement for strength and physical stamina, that requirement should be applied equally to both sexes.

This amendment will mean that child support, alimony, and other payments related to separation and divorce will be based on the merits of the argument, such as the earning capacity of the parties and the need established in a given situation. These will no longer be determined on the basis of sex. The Citizens' Advisory Council on the Status of Women reported that

... the data available, though often scanty, indicates that in practically all cases, the wife's ability to support herself is a factor in determining the amount of alimony; that alimony is granted in only a very small percentage of cases; that fathers by and large, are contributing less than half the support of the children in divided families; and that alimony and child support awards are very difficult to collect.

It is not likely, therefore, that such payments will be substantially increased by this amendment; what is likely is that judgments regarding such payments will be based upon justifiable criteria rather than on the basis of sex differences.

What this amendment really means is that women will be judged as individuals. When they apply for jobs, they will be judged on their ability, training, and other job-related factors. They will not be branded categorically and faced with a separate, and often prejudicial, set of standards. They will be free to develop in their own individual way.

WHAT THIS AMENDMENT WILL NOT MEAN

The adoption of the equal rights amendment will not lead to the merging of public restroom facilities. The bizarre charges leveled at this amendment are simply not true. It will not impose quotas on all aspects of hiring.

The equal rights amendment would in all probability lead to the drafting of some women if drafting of men is also in process. But it would not mean that women would serve in every aspect of our military effort: if some military jobs, such as certain aspects of combat action, had requirements that eliminated women, then so be it. Women would not serve in those jobs. Neither would the men who did not qualify for the standards set for that specific kind of activity. This would be allowable under the amendment, as long as the standards are set on the basis of the job performance, and not on the basis of sex.

I have consistently supported the goal of a volunteer army. This would eliminate the kind of debate that occurs over whether women should or should not be drafted. Until we reach that point, women would be called upon to serve their country to the same degree that men serve.

It is not true that this amendment would necessarily result in women being drafted into the Armed Forces to the detriment of the family. At present, men who are the sole support of families may claim exemption. When persons are needed to care for their children, exemptions can be granted. These exemptions simply must be uniform for both sexes.

We must make a distinction between "sameness" and "equality." Let me quote from the report issued by members of the House Judiciary Committee:

"Equality" does not mean "sameness." As a result, the original resolution would not prohibit reasonable classifications based upon characteristics that are unique to one sex. For example, a law providing for payment of the medical costs of childbearing could only apply to women. In contrast, if a particular characteristic is found among members of both sexes, then under the proposed amendment it is not the sex factor but the individual factor which should be determinative.

After the adoption of this amendment, States would have 2 years to clarify their laws on this subject. When present laws create unfair obstacles, I would expect the State legislatures to eliminate those laws. When State laws provide useful protection, such as minimum wage laws in States where only women are covered, I would expect that State to extend those laws to cover all workers regardless of sex. There is ample case law to demonstrate that the courts have the authority to make this kind of extension if the State legislatures do not.

CONCLUSION

The fight for equal rights for women is very close to victory. It is closer than it has ever been before. The time has come, the stage is set, and the need is apparent. I hope that Senators will join together to support these words, unencumbered by any modifying amendments:

Equality of rights under the law shall not be denied or abridged on account of sex.

EQUAL RIGHTS AMENDMENT PASSAGE IS TIMELY AND NECESSARY

Mr. RANDOLPH. Mr. President, I reiterate my support for the adoption of the resolution insuring equal rights for men and women. I am a cosponsor of this proposed constitutional amendment being debated and have cosponsored several similar amendments in previous Congresses. I have voted against all of the amendments offered to this resolution. Their approval, even in part would have torn into legislative shreds the purpose of this historic effort.

Our Nation was founded on the basis that:

All . . . are created equal, . . . with certain unalienable Rights, . . . among these are Life, Liberty, and the Pursuit of Happiness. . . .

However, this Declaration of 1776 has not yet applied to those of the female sex.

It is inconceivable to me that, in this supposedly enlightened age, there should be such ponderous deliberation on the equality of humans. Yet, Congress has delayed for five decades the passage of the equal rights amendment, but today will act to rectify this condition.

We are not discussing rights which need be or have been earned but rather rights which American women are willing to accept and desire to receive. There is no such thing as a woman's place. She has always shouldered her share in our society. The contributions of women have been very great in all phases of the development of not only our Nation but the world. Very often, however, we attempt to cut them off summarily from the continuing and expanding produc-

tivity of American life. Women have been forced to overproduce and to overperform to overcome the barriers to recognition and acceptance as an effective, viable participant in our society—culturally, socially, and economically.

The enfranchisement of women on August 26, 1920, to participate in the political life of our country was only the first major step in recognizing women's equality under the law. American women have come a long way from the days when nursing and teaching were considered the only proper occupations. Today, one in every three workers outside the home is a woman. Women must be encouraged to prepare for whatever jobs they are interested in and aspire to do. No field should be closed to capable and well-trained women. It is not a matter of competition with men but rather permitting each person to make the fullest use of his or her talents. In the recognition of individual differences, we establish a base from which to work on the equalization—not of sex, but of opportunity.

It is past time that these legal barriers be removed. Our affirmative action, of course, will not wipe out sex discrimination prejudices in the minds and activities of private individuals, groups, and companies. By removing the legal restrictions we can accord women greater opportunity to pursue a richer, fuller life and the opportunity to attack the prejudices that continue to exist in the minds of people.

It is appropriate that as we approach our bicentennial that we not only celebrate the creation of our Republic but that we also further the creed on which our great Nation was founded—liberty, justice, and equality for all—by adoption of the proposed 27th amendment to the Constitution. I am certain the necessary 38 States will ratify—and do it soon.

I recommend the Chairman of the Constitutional Amendments Subcommittee (Mr. BAYH) for his leadership and perseverance in this matter and in his continuing efforts to insure that our Constitution and the rights guaranteed therein are available to all Americans. Last year we accomplished such an expansion by the approval of the 26th amendment according 18-19-20-year olds the right to vote, a change which I worked to achieve for almost 30 years.

EQUAL RIGHTS FOR WOMEN—AN AMENDMENT WHOSE TIME HAS COME

Mr. BYRD of West Virginia. Mr. President, there is ample evidence in the report from the Committee on the Judiciary, that equality of rights for women under Federal and State law especially—in employment—does not now exist, and that certain inequities currently and historically suffered by women due to unequal provisions of the law should be eliminated forthwith.

The equal rights amendment to the Constitution now being considered in this body has a legislative history going back almost half-a-century. Shortly after the ratification of the 19th amendment, when women's suffrage became a reality, a constitutional amendment was proposed giving equal rights to men and women. In nearly every Congress since 1923, similar action had been proposed, and resolutions were reported favorably

by the Subcommittee on Constitutional Amendments in the 88th, 89th, and 90th Congresses. Resolutions were reported favorably by the Committee on the Judiciary in the 80th, 81st, 82d, 83d, 84th, 86th, 87th, and 88th Congresses.

House Joint Resolution 208, which we are currently considering in this body, was adopted in the House of Representatives in October of 1971 by the overwhelming margin of 354 to 23. By a vote of 15 to 1, the Senate Committee on the Judiciary, on February 29, 1972, ordered House Joint Resolution 208, Senate Joint Resolution 8, and Senate Joint Resolution 9 reported favorably to the Floor of the Senate, unamended.

It is clear from this legislative history that there is strong support for the equal rights amendment in both the House of Representatives and in the Senate. This is as it should be. Sex should not be a factor in determining the legal rights of women or of men, and the discrimination against women prevalent in our laws in the fields of education, business and labor, and private and public employment is an anachronism. While I am sure that these restrictions stem from an original desire to protect, rather than to dispossess, their effect in today's society is appreciably more toward restriction than protection, and they should be eliminated. The adoption by the Senate of the equal rights amendment is an important and necessary step in that direction.

Mr. ERVIN. Mr. President, at long last I have become convinced that a two-thirds majority of the Senate is going to join the House in submitting the equal rights amendment to the States for ratification or rejection. This being true I would like to make some information available to members of legislatures by inserting it in the RECORD at this point. I ask unanimous consent that two statements made by Prof. Philip Kurland of the University of Chicago Law School and a statement made by Justice Philip Frankfurter, and certain comments made by me thereon be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the CONGRESSIONAL RECORD,
Sept. 14, 1970]

THE EQUAL RIGHTS FOR WOMEN AMENDMENT

Mr. ERVIN. Mr. President, one of the most amazing facts in the present debate on the House-passed equal rights for women amendment is that no law professors were called to testify by either the House or the Senate subcommittees considering the matter. It is unbelievable to me that the Congress would seriously consider a proposed amendment to the Constitution which was not discussed at all by those who have spent their lives studying and teaching constitutional law.

In the Senate Judiciary Committee hearings this week, we have attempted to hear several law professors discuss the ramifications of the equal rights for women amendment, if it passes. Yesterday, I placed in the CONGRESSIONAL RECORD the statement of Paul J. Freund, of the Harvard Law School, in opposition to this amendment. Today, I ask you to consider the testimony of another outstanding constitutional law expert—Prof. Philip Kurland of the University of Chicago Law School. Professor Kurland is editor of the Supreme Court Review and is truly one of the most knowledgeable men in the United States in his field.

In his statement, Professor Kurland writes that the equal rights amendment is an "instant and simplistic" solution to a complex problem. He foresees many problems resulting from the amendment, including the possible use of quota figures in Federal agencies as a guide to discriminations against women.

While Professor Kurland feels that "the proper answer to the very real problem of inequality now bedeviling some women in this country would be better answered by specific legislation than by the proposed constitutional amendment," he does state that the amendment which I introduced, Senate Joint Resolution 231, would be preferable to the House-passed version.

The passage of a constitutional amendment is serious business, and I hope that every Senator will be able to thoughtfully consider Professor Kurland's statement.

Mr. President, I ask unanimous consent that Professor Kurland's testimony be printed at this point in the RECORD.

STATEMENT OF PHILIP B. KURLAND

I am honored by the Committee's invitation to appear before it today. I am, however, dubious that I can materially contribute to a solution of the problems confronting you. I come with questions not answers.

My bias should be made clear. I am satisfied, though I cannot provide the Committee with documentary evidence, that women in this country suffer from unreasoned discrimination against them in many phases of their lives, not least in the sphere of employment. I am anxious to help diminish such unjustified discrimination. But I am not sure that the proposed constitutional amendment offers a realistic means for bringing about such a result.

My doubts may be based in part on my personal notions about constitutional amendments. I think that they are clearly the best means of bringing about changes in governmental structure. I think they offer an appropriate means for reversal of constitutional construction by the Supreme Court. I think they may be the necessary means for protecting minorities from imposition by majorities and the unenfranchised from imposition by the enfranchised. Women, however, are neither a minority nor unenfranchised. This would suggest to me that the most appropriate means for securing the desired results on their behalf would be by way of appropriate legislation rather than constitutional amendment.

The answer which this Committee is considering, however, is an amendment to the Constitution. H.J. Res. 264 has already passed the House by an appropriate majority. Its provisions also seem to have been endorsed, if not finally, by the necessary majority of the Senate. Such an answer is in keeping with much of the temper of our times that demands instant and simplistic solutions to complex problems, that assumes that the cure for such problems is the utterance of the magic word "equality," and that the proper governmental agency for effecting the cure is the judiciary. All three of these contemporary attitudes are represented in H.J. Res. 264.

I don't think the answer is that easy, much as I wish it were.

The arguments against the amendment, putting aside that of the unenlightened who would endorse the notion that the only proper place for women is as helpmates for men, are four.

First, it is contended that in light of the newly expanded meaning of the Equal Protection Clause of the Fourteenth Amendment, there is no need for further constitutional provision to protect women against invidious discrimination. It is clear that, to the extent the proposed amendment authorizes legislation by Congress and the States, no addition is needed. Section 5 of the Fourteenth Amendment plus the Commerce Clause gives the Congress an almost unlim-

ited reach in commanding equality between the sexes. There are no inhibitions on State legislatures that would prevent them from doing the same, except for the concept of preemption by either federal legislation or the Commerce Clause. The question remains, however, whether the equality talked about by the Court in construing the Fourteenth Amendment is the same equality as is the subject of the proposed amendment. Only if the answer to that question is in the affirmative does the proposed amendment become redundant. The ambiguity of meaning of the proposed amendment does not make clear its equation with current Equal Protection Clause doctrines.

Second, it is argued that the proposed amendment will raise a myriad of legal problems involving such matters as family law and decedent's estates to the status of constitutional issues that will have to be decided by a Supreme Court already unduly burdened with an unbearable load of constitutional business. The answer offered to this argument is that any fundamental change in the social structure of our society to be brought about by constitutional amendment will place such a burden on the federal judiciary. The Court itself has shown no reluctance to add similar social issues to its docket. Insofar as more important matters make claims on the Court's jurisdiction, it remains within the discretion of the Court to decide which cases it will decide. Again, the extent of the burden may well depend upon the clarity of purpose and meaning of the proposed amendment. The more ambiguous it is, the greater the problem of constitutional adjudication will be.

Third, it is said that the proposed amendment will invalidate a host of state laws enacted not for the purpose of discriminating against women but with the objective of favoring them. One can readily see the difficulty of determining whether a law favors or discriminates against women. For example, my classical economist friends would say that laws protecting women against overtime work and night work do not in fact favor them because these laws place women at a competitive disadvantage in the employment market. In any event, the question of the extent to which laws classifying on the basis of sex would be invalidated would again depend on the meaning and purpose of the proposed amendment.

Fourth, it is suggested that the proposed amendment seeks not equality of the two sexes before the law but identity of them. Surely the elimination of differences between men and women cannot be obliterated by constitutional fiat. And the current state of knowledge of the biological sciences is not yet adequate to bring this about as a fact. But once more we are thrown back to the question of the meaning and purpose of the proposed amendment.

It is evident that the language of the proposed amendment is itself too barren to provide sure answers to these objections. It simply provides that: "Equality of rights under law shall not be denied or abridged by the United States or by any State on account of sex." With all due respect to Senator Ervin, I cannot agree with his statement on the floor of the Senate that the difficulty inheres in the construction of the word "sex." For me, at least, it derives rather from the use of the word "equality."

It was almost a century ago that Sir James Fitzjames Stephen, in his book, *Liberty, Equality, and Fraternity*, asserted that "equality is a word so wide and vague as to be by itself almost unmeaning." Nothing that has happened in the intervening years has done anything to make it more specific.

It seems to me, therefore, that it is incumbent on Congress, unless it wishes to leave the matter wholly in the hands of the federal judiciary, to attempt to define, to the extent that it can, what it means by the word "equality" as it is used in the pro-

posed amendment. It can do this in two ways. The first and better way would be to write its meaning into the language of the amendment itself. Certainly this is a difficult undertaking. And perhaps the political situation being what it is, Senators and Congressmen may well believe that it is the greater part of wisdom not to risk the costs of delay in the preparation of the amendment. I would remind them, however, that constitutional provisions are "not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity." Perhaps, then, it is worth the cost of delay to present an amendment the meaning of which is as clear as it is in the power of Congress to make it.

The alternative to careful drafting of the amendment itself is the careful preparation of the legislative history, primarily by way of the report of this Committee to the Senate. This is no certain cure for the defects of ambiguity. The resort by Justices of the Supreme Court to the legislative history behind the Reconstruction Amendments makes clear the dangers of this game. Legislative history will as frequently compound the confusion as resolve it. Nevertheless, if this is the only open road, it must be taken.

The essential question to be answered by this Committee's report then, if nowhere else, is what it understands to be the meaning of "equality" as used in the proposed amendment. Again, this is no easy task. Hints may be found in some data of Mr. Justice Frankfurter in his construction of the Equal Protection Clause of the Fourteenth Amendment. In *Whitney v. Tax Commission* (309 U.S. 530, 542 (1940)) he said: "The Equal Protection Clause was not designed to compel uniformity in the face of difference." And during the same Term, he announced in *Tigner v. Texas* (310 U.S. 141, 147 (1940)): "The Constitution does not require things which are different in fact or opinion to be treated by the law as though they were the same." It was his belief, as stated in *Dennis v. United States* (339 U.S. 162, 184 (1950)) that "there is no greater inequality than the equal treatment of unequals." And it was Mr. Justice Holmes who told us that: "The Constitution is not to be satisfied with a fiction." (*Hyde v. United States*, 225 U.S. 347, 390 (1912).) I should think that these statements would provide a clue for the meaning of the word "equality" in the context that it is to be used. Governmental distinction between males and females must be justified in fact before it can pass muster under the proposed amendment. If the distinction is based on reason, then the legislation should be presumptively valid. The mere fact that there are two sexes is not reason in itself for distinguishing between them in legislation. On the other hand, that a distinction is drawn between them in legislation should not be sufficient to invalidate the law.

It may be said that this is already the command of the Equal Protection Clause. And it may well be. But there are cases that suggest this is not true. Nor has such a clear doctrine emerged from the Supreme Court's Equal Protection cases as to make this construction certain.

There are other questions to which the Committee should address itself, questions revealed by recent Supreme Court cases and others on their way to adjudication in that tribunal.

One question is whether the proposed amendment would tolerate in certain circumstances a doctrine of separate but equal facilities. Certainly there are still some, albeit old-fashioned, notions of privacy that might properly evoke the use of such a rule.

A second area of concern should be to what extent does the amendment by its terms condemn only governmental action and when

does private action become government action for purposes of the amendment. Still further, to what extent is it contemplated that the authorization for legislation contained in the proposed amendment is to be restricted by a limitation to "state action?"

Finally, the Committee might like to speak to the issue whether the proposed amendment contemplates legislation authorizing "compensatory discrimination" or "benign quotas." This necessarily involves the problem of what constitutes proof of discrimination and the problem of remedies. Should it be enough, for example, to show that the ratio of male employees to female employees at the executive level in the Department of Labor or the Department of Health, Education, and Welfare is not in the same proportion as men to women in the population at large? If proof of discrimination is made what are appropriate remedies for its elimination?

When the time comes for the Supreme Court to look to the legislative history of the proposed amendment to aid it in providing answers to these questions, the answers should be there for them to find.

Let me turn to the proposed alternative in S.J. Res. 231. It must be apparent that the Senate proposal answers more of the questions that I have raised than does the House amendment. It certainly does not answer all of them. And it creates a problem of its own, to define more precisely the area covered by the general proposition in light of the exceptions thereto.

There is clearly one fact that speaks up loudly for the choice of the Senate proposal. Times have changed in such a way that it may well be possible for the generation of women now coming to maturity, who had all the opportunities for education afforded to their male peers and who had an expectation of opportunities to put that education to the same use as their male peers, to succeed in a competitive society in which all differences in legal rights between men and women were wiped out. There remains a very large part of the female population on whom the imposition of such a constitutional standard would be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keepers of their homes. There are a multitude of women who still find fulfillment in this role. In the eyes of some, this may be unfortunate, but it is true. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Nor can women be regarded as unified in their desire for change. Certainly the desire to open opportunities to some need not be bought at the price of removal of legal protections from others. The Senate proposal would allow for such differences, the House proposal would not.

In summary then, I think that the proper answer to the very real problem of inequality now bedeviling some women in this country would be better answered by specific legislation than by the proposed constitutional amendment. If the route of constitutional amendment is taken, the amendment ought clearly to spell out what it means. If this cannot be accomplished by new drafting, then it should be attempted by explanation in this Committee's report to the Senate. As between the House version and the Senate version of proposed constitutional amendments, there are good reasons for choosing the latter.

[From the CONGRESSIONAL RECORD, Jan. 31, 1972]

VIEWS OF JUSTICE FELIX FRANKFURTER ON THE EQUAL RIGHTS AMENDMENT

MR. ERVIN. Mr. President, many years ago the late Justice Felix Frankfurter wrote to the *New Republic* magazine which I feel expresses a great deal of truth about the equal

rights amendment that will soon be considered by the Senate. Justice Frankfurter certainly expresses my feelings in his letter when he states that he "cares as deeply as a man can care for the elimination of unjustifiable differentiations in law between men and women," but Justice Frankfurter goes on to criticize the strenuous efforts of the equal rights for women advocates to remove all differences in the law in the treatment of women and men. Justice Frankfurter concludes his letter by stating that—

"The Woman's Party cannot amend nature. But it can add considerably to the burdens already weighing too heavily upon the backs of women, the industrial workers, who are least able to bear them."

I certainly agree with Justice Frankfurter and I hope every Member of the Senate will read his letter as a contribution of a very wise man to the up-and-coming debate on the amendment. Realistically, I feel the soundness of his pronouncements are evidenced by the fact that most labor unions in this country, including AFL-CIO, strongly oppose the equal rights amendment.

Mr. President, I ask unanimous consent that the letter by Justice Felix Frankfurter which appeared in the *New Republic* be printed in the Record.

UNIVERSITY OF CHICAGO,
Chicago, Ill., April 6, 1971.

Representative DON EDWARDS,
House Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. EDWARDS: If the record on the equal rights amendment hearings is not yet closed, I should like to append thereto a letter by Felix Frankfurter, written to the *New Republic* way back in 1924 but which still has, I think, great relevance to the issues pending before the committee.

I regret very much that my mother's very serious illness prevented me from attending the hearings.

Sincerely yours,

PHILIP B. KURLAND.

THE EQUAL RIGHTS AMENDMENT

Miss Crystal Eastman challenges the gallantry of men by offering as a poser, in connection with the "equal rights" amendment of the Woman's Party, the question: "How would you feel about it if you were a woman?" Her question assumes a power of imagination which, alas, has been denied to mere man just because he can only think within his own skin. Therefore, I can't tell her how I would feel about it as a woman. It may be more relevant for me to tell her how I feel about it as one who cares, I suspect, as deeply as a man can care for the elimination of unjustifiable differentiations in law between men and women, but one who also happens to be a lawyer and perhaps familiar with what law can do and what law cannot do, in the significant details that matter.

The legal position of woman cannot be stated in a single simple formula, especially under our constitutional system, because her life cannot be expressed in a single simple relation. Woman's legal status necessarily involves complicated formulation, because a woman occupies many relations.

The law must have regard for woman in her manifold relations as an individual, as a wage-earner, as a wife, as a mother, as a citizen. Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about "equal rights." (I am aware that Crystal Eastman once upon a time knew something about law; but that was long ago and far away. Now she disregards her former learning and writes as a "feminist.") Nature made man

and woman different: the Woman's Party cannot make them the same. Law must accommodate itself to the immutable differences of nature. For some purposes men and women are persons and for these purposes the law should treat them as persons, subjecting them to the same duties and conferring upon them the same rights. But for other vital purposes men and women are men and women—and the law must treat them as men and women, and, therefore, subject them to different and not the same rules of legal conduct.

The unjustifiable legal differentiations as to women still existing in different States vary greatly from State to State. Now that women have the vote, these discriminations will readily yield to correction by appropriate State action, provided the attempts at reform are preceded by an effective analysis of the legal situation in each State, an understanding formulation of remedies and an adequate educational exposition of the evils and remedies as a preliminary to legislation. But in a binding effort to remove remaining differences in the law, in the treatment of women as compared with men, which do not rest on necessary policy based on inherent differences of sex, the Woman's Party would do away with all differences which arise from the stern fact that male and female created He them. The Woman's Party cannot amend nature. But it can add considerably to the burdens already weighing too heavily upon the backs of women, the industrial workers, who are at least able to bear them.

[From the CONGRESSIONAL RECORD, Feb. 4, 1972]

UNIVERSITY OF CHICAGO LAW PROFESSOR OPPOSES EQUAL RIGHTS FOR WOMEN AMENDMENT

Mr. ERVIN. Mr. President, one of the Nation's most outstanding law professors, Philip B. Kurland, professor of law at the University of Chicago Law School and editor of the Supreme Court Review testified last year before the House Judiciary Committee in opposition to the equal rights for women amendment.

In his statement, Professor Kurland maintains that adequate authority now exists for the legislatures of the States and Congress to pass legislation "that is directed to specific evils and effective administration of that legislation will be far more effective in accomplishing the purpose of eliminating invidious discrimination." I agree with Professor Kurland and I think that the advocates of the equal rights amendment could make much better use of their time in bringing forth specific proposals before Congress and the State legislatures that would be designed to correct specific areas of discrimination against them.

Professor Kurland finds a great deal wrong with the fact that the equal rights amendment could be interpreted to abolish all legal differences in the treatment of men and women. Professor Kurland called this "a demand for unisex by constitutional mandate." And, with simple clarity, Professor Kurland explains what is wrong with the unisex amendment. He said:

"There are physiological and biological differences between men and women that are not subject to eradication even by constitutional amendment."

Professor Kurland discusses in detail one very practical problem which could be caused by the passage of the equal rights amendment. I sincerely hope that each Senator, before voting on the equal rights amendment, will think about this problem. Professor Kurland has this to say:

"Times have changed in such a way that it may well be possible for the generation of women now coming to maturity to surrender all special legal protection and privileges. A great majority of them have had all the

opportunities for education and training afforded to their male peers, with an expectation of full opportunities to put that education and training to the same use as their male peers. They may well be able to succeed in a competitive society in which all differences in legal rights between men and women were wiped out. There remains, however, a very large part of the female population on whom the imposition of such a constitutional standard could be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keeper of their homes. There are a multitude of women who still find fulfillment in this role. This may be unfortunate in the eyes of some; it remains a fact. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Nor can women be regarded as unified in their desire for this change. Certainly the desire to open opportunities to some of them can be achieved without the price of removal of the protection of others."

Mr. President, I ask unanimous consent that Professor Kurland's statement be printed at this point in the RECORD.

STATEMENT BY PHILIP B. KURLAND, PROFESSOR OF LAW, THE UNIVERSITY OF CHICAGO

I am grateful to the committee for its invitation to express my views on the subject of a proposed constitutional amendment to provide "equal rights for women." I am not sure that I have any contribution to make to a subject that has received such extensive attention by the Congress over a period of almost 50 years now.

Indeed, I have but two points to make to this committee on the subject. First, I do not believe that a constitutional amendment is either necessary or appropriate to alleviate the very real discriminations suffered today by women in American society. I say this for two reasons. The discriminations from which women suffer in our society are essentially not those imposed by laws of either national or local governments. I submit, too, that legislation, for which Congress and the States already have ample authority, that is directed to specific evils and effective administration of that legislation will be far more effective in accomplishing the purpose of eliminating invidious discrimination.

My second proposition is that if such an amendment is to be proposed by Congress, its aims and purposes are to be clearly delineated, either in the language of the amendment or by the reports of the committees recommending the amendment to the respective houses of Congress. Congress should particularly indicate whether it is fostering a "unisex" approach or one that bars only invidious discrimination against women. They are not the same, however much some of the sponsors of the proposed amendments would like them appear to be the same.

At the risk of trying to teach my grandmother to suck eggs, I should like to begin by referring to the tortured history of the proposed amendment.

I. SOME LEGISLATIVE HISTORY

Last year, some 47 years after it was first proposed in Congress, a joint resolution to initiate an equal rights amendment was sprung from the grasp of this committee, rushed through the House after a debate of less than 1 hour, and failed of endorsement in the Senate by a whisker. The 1923 version was put simply and ambiguously: "Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation." Obviously, the language so chosen was rife with problems of appropriate construction. The 1970 language, in a form that has essentially been used for the last 15 years or

so, and repeated in the proposed resolutions under consideration here today, afforded different, but no less challenging, ambiguities. It reads:

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."

The proposal for an equal rights amendment obviously had not lain dormant between 1923 and 1970. After the initial impetus provided by the suffragettes, it emerged again in the period following the Second World War, during which much of what had therefore been considered men's work was ably performed by women. Indeed, in the years 1942, 1944, 1946, 1948, 1950, 1952, 1953, 1956, and 1962, the Senate Committee on the Judiciary had reported favorably on essentially the same proposal as that under consideration in 1970. And, in 1950 and 1953, the Senate had approved those resolutions with the votes of 63 to 19 and 73 to 11, respectively. There was, therefore some irony in the fact that the proposal that had in the past succeeded in the Senate but languished in the House of Representatives should, in 1970, have met its doom in "the other body" after passage in the House of Representatives.

There is an explanation for this. The Senate had not in fact changed its position in the interim. The two successful Senate forays in 1950 and 1953, had been accomplished only after the proposal had been amended by Senator Hayden's language, which appended the following: "The provisions of this article shall not be construed to impair any rights, benefits or exemptions conferred by law upon persons of the female sex." Had the proponents of the 1970 proposal taken cognizance of this history and accepted the conditions of the Hayden qualifications, I venture that the proposal would have again readily secured Senate acquiescence. The refusal by some protagonists to accept the qualification was probably not, however, inadvertent; it was calculated. It represented a deliberate choice between two different objectives, either but not both of which the proposed amendment might fully serve.

II. CONSTRUCTION AND RECONSTRUCTION

Mr. Justice Frankfurter once told us: "Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effectuate a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate, and he ought not to be led off the trail by tests that have overtones of subjective design." If it is the duty of the judiciary to effectuate the aim of legislation, it is no less the duty of the legislature, to the best of its capacity, to make clear what its aims are. It ought to say what mischief it wishes to obviate, what inadequacy it wants to supply, what change of policy it desires to effectuate, or what the plan of government is that it is seeking to formulate. If it is an act of usurpation for the judiciary to read legislation to effect its own aims and purposes, it is an act of abdication for the legislature to fail to state its purposes and aims in framing the legislative act that it promulgates.

The prime difficulty with the proposed 1970 equal rights amendment was that the National Legislature came close to approval of constitutional legislation without defining—without knowing?—its aims and purposes. This is not a lawyer's caviar. It was a defect so patent that newspaper editorial writers could see it. Thus, the New York Times wrote:

"Equal rights for women is a proposition so unarguable in principle and so long overdue in practice that it is a pity to have it

approached by the House of Representatives as an exercise in political opportunism. For 47 years that body regularly rejected out of hand all proposals for a women's rights amendment to the Constitution. Now it approves, without committee hearings and after only an hour's debate, a constitutional change of almost mischievous ambiguity."

The Times itself was guilty of compounding the confusion, for it fell into the trap of thinking that equal rights and women's rights are necessarily descriptive of the same legislative objectives. It is of the essence of the problem that frequently they are not. And so there is merit in its desire for elimination of almost mischievous ambiguity, just as there is merit in the editorial proposal of the Wall Street Journal: "Well, we're all for the ladies, but even so, before we write some new words into the Constitution it would be nice to know what they really do mean."

A. A basic conflict of purpose

The primary problem of construction offered by the proposed equal rights amendment derives from the fact that the movement for women's rights is Janus-faced. The proposed amendment presented one aspect, while much of its support was voiced in terms of its other visage. The first would command the treatment of men and women as if there were no differences between them, even at the price of removing protections and benefits that have otherwise been afforded to females. It was a demand for unisex by constitutional mandate. And much of the benefit of such a proposal, to the extent it was possible to effectuate it, would inure to males rather than females, since equality may be attained by applying to all the rules that had theretofore been applied only to females, such as a lower age of emancipation, no legal obligation of family support, exemption from military service.

The second attitude sought only the elimination of discrimination against women, a ban on treating females as a disabled class. Legislation purporting to afford—and in fact affording—privileges to women that were not also available to men would not run afoul of such constitutional provision. The difference is essentially the difference between the amendment without the qualifying Hayden language, and with it. And herein lies the conflict among those who would support some constitutional amendment to abate the legal incapacities of women, certainly a sufficient majority of both the House and the Senate to promulgate a proposed amendment if they could but agree on its purpose and function.

There are some basic difficulties with the unisex approach, not the least of which is that there are physiological and biological differences between men and women that are not subject to eradication even by constitutional amendment. Practically, of course, this may present no difficulties for the very reason that nature cannot be subjected to human laws while humans must bow to the laws of nature. The essential claim for such a declaration of equality of the sexes is its symbolic value. The temper of our times demands instant and simplistic answers to complex problems. And it is this temper that assumes that the cure for such problems lies in the incantation of the word "equality" by our highest governmental means, the Constitution, or by the voice of the Constitution, the Supreme Court of the United States. Without denying the importance of symbols, it is necessary to recognize that when they are only the creatures of the Constitution, thus far at least, their effect has been less than pervasive.

A second difficulty with a constitutional mandate of instant equality of the sexes is that proffered by history. Times have changed in such a way that it may well be possible for the generation of women now coming to maturity to surrender all special

legal protection and privileges. A great majority of them have had all the opportunities for education and training afforded to their male peers, with an expectation of full opportunities to put that education and training to the same use as their male peers. They may well be able to succeed in a competitive society in which all differences in legal rights between men and women were wiped out. There remains, however, a very large part of the female population on whom the imposition of such a constitutional standard could be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keeper of their homes. There are a multitude of women who still find fulfillment in this role. This may be unfortunate in the eyes of some; it remains a fact. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Nor can women be regarded as unified in their desire for this change. Certainly the desire to open opportunities to some of them can be achieved without the price of removal of the protection of others.

On the other hand there are also difficulties in an amendment that does not ban all legislative distinction in treatment of men and women, that would leave unchallenged those laws that purported to confer, in Senator Hayden's language, "rights, benefits or exemptions . . . upon persons of the female sex." The question when a statute confers a benefit rather than imposing a disability is often difficult to answer. The most cited example of the problem are those laws that provide for minimum wages, maximum hours, limitations on night work, and requirements of sanitary conditions for women workers. Certainly since Louis D. Brandeis fought for the validity of such legislation, it has been assumed by right-thinking people that the legislation was for the benefit of women.

Classical economists, on the other hand, are clear that such laws put women at a competitive disadvantage in the employment market. A Department of Labor study, however, purported to show that there was no difference in women's employment between those States that have laws providing minimum wages or banning night work and those that didn't and only a very small difference between the States that banned women's overtime work and those that did not. This sort of question, whether the legislation affords privilege or imposes disability, however, may be one appropriate for judicial resolution on a case by case basis, with the results dependent on the facts adduced and the values assigned to them.

B. The problem of equality

If an amendment were passed that in effect prohibited all legislative classification in terms of sex, the results might not be desirable but the problems of construction would be minimal. The judicial answers could be mechanical and, therefore, easy. The difficulty is that not even the sponsors of such a unisex amendment have made the claim for rigid classification. Apparently embarrassed by the prospect of the abolition of such existent requirements as separate toilet facilities for men and women or the availability of maternity leaves, proponents of the equal rights amendment asserted that certain distinctions could continue to be maintained, so long as the principle of equality is assured. The concept of equality is not, however, one that is easily defined or confined.

The phrase "equal rights" might be repeated an infinite number of times without providing additional guidance to the speaker or listener. Mr. Justice Cardozo noted some time ago that "a great principle of constitutional law is not susceptible of comprehensive statement in an adjective." And it

was almost a century ago that Sir James Fitzjames Stephen asserted that "equality is a word so wide and vague as to be by itself almost unmeaning." Nothing that has happened in the intervening years has done anything to make it more specific.

There are suggestions in some of Mr. Justice Frankfurter's opinions to mark the perimeter of a constitutional notion of equality that have an appeal, if only to a small audience. In *Whitney v. Tax Commission*, he pointed out that: "The equal protection clause was not designed to compel uniformity in the face of difference." And, in the same term of Court, he announced in *Tigner v. Texas*. "The Constitution does not require things which are different in fact or opinion to be treated by the law as though they were the same." It was also his view that "there is no greater inequality than the equal treatment of unequals." Applying these notions in the context of the equal rights amendment, one might work out some generalizations. Governmental distinction between males and females would have to be justified in fact before it could pass muster under the proposed amendment. If the distinction were based on reason, then the legislation should be presumptively valid. The mere fact that there are two sexes should not be reason in itself for distinguishing between them in legislation. On the other hand, the mere fact that a distinction was drawn between them ought not to suffice to invalidate the law. I should think that appropriate data of sociological conditions, especially those deriving from a history of different treatment of the sexes, might warrant the continuance of certain benefits and protections. This should certainly be true of laws relating to domestic relations where marriage contracts were made under laws that created certain expectations or obligations of one spouse to the other, including the male's obligation to support not only his wife but his children as well.

C. The Equal Protection Clause

Such a construction necessarily raises the question whether the equal protection clause of the 14th amendment does not already afford all that the proposed equal rights amendment would offer. The difficulty is that the other informed answer must be that it probably does, but we have no definitive construction by the Supreme Court to give us adequate assurance. Certainly there are cases in the past that raise some doubts that this notion of nondiscrimination on the ground of sex has yet been constitutionally established. Certainly *Breedlove v. Suttles*, *Goessart v. Cleary*, and *Holt v. Florida*, to the extent that they are still viable precedents, do not make it clear that classification by sex is yet regarded, under the 14th amendment, as a "suspect classification" like those of race or religion.

On the other hand, there can be little doubt that the 14th amendment together with the Commerce clause give more than adequate authority to the national legislature to ban discrimination on the basis of sex. And the 1964 Civil Rights Act affords ample evidence that the power can be utilized where the legislature finds that such invidious discrimination needs extirpation.

The scope of the 14th amendment as a direct restraint on Government action still reveals some ambiguities, however, that would also trouble the proposed equal rights amendment. To what extent is the constitutional ban to be read as one against State action only? When is individual action to be treated as State action? And to what degree does the constitutional ban on discrimination authorize legislation providing for "reverse discrimination" or "benign quotas?" If a new amendment does not—and it is not likely that it will—reveal the answers to these questions in its language, it would be helpful to its proper construction to know from the legislative history what Congress

thought to be the proper answer to these questions. As of now, the entire legislative history—from 1923 to 1970—is less than enlightening on these subjects.

I tend to believe that an equal rights amendment would be more important for its enabling clause than for its direct substantive effect, especially if the "unisex" construction were not adopted. And such an enabling clause would certainly add little to what is already provided by the 14th amendment and the Commerce clause. Today, the area of governmentally compelled or sanctioned discrimination against women is very limited and is growing smaller all the time. It should be noted, for example, that some of the primary planks of the "women's liberation" platform, such as the right to abortion, or to "child care centers," would be totally unaffected by the proposed amendment even in its "unisex" version.

III. CONCLUSION

I come back to the point at which I started. I don't think that the controversy over the proposed amendment goes to the question whether invidious discrimination against women should be eliminated, but rather to the question of the appropriate means for accomplishing that objective. If the answer is to be by amendment, which I regard as unnecessary because the legislative power that it would confer already exists, the amendment should be something more than a license to the judiciary to create that kind of amendment that Congress was itself unable to frame. Congress should, at least, choose between a proposal that would purport to say that there are no differences between men and women that are cognizable by law and its alternative that would seek to protect women against discrimination.

Mr. ERVIN. Mr. President, I ask unanimous consent to have printed in the RECORD the minority views expressed by me in respect to the committee report.

There being no objection, the minority views were ordered to be printed in the RECORD, as follows:

MINORITY VIEWS OF Mr. ERVIN

Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure?—Dr. Jonathan H. Pincus, Professor of Neurology, Yale Medical School.

I. INTRODUCTION

To abolish unreasonable and unfair discriminations against women is a worthy goal. No one believes more strongly than I that discriminations which society makes against women in certain areas of life ought to be abolished and they ought to be abolished by law in every case where they are created by law.

To stop discriminations against women we are considering Constitutional amendments which would abolish all legal distinctions between men and women. Therefore, the question to be resolved by the Senate is that: Should all laws which treat men and women differently be abolished and should the Federal government and the State legislatures be forbidden by the Constitution to pass any such legislation in the future?

Before we abolish all legal differences in the treatment of men and women to reach the admittedly unfair discriminations which do exist against women, I believe that we should consider the following questions:

1. What is the character of the unfair discriminations which society makes against women?

2. Does it require an amendment to the Constitution of the United States to invalidate them?

3. If so, would the Equal Rights Amendment constitute an effective means to that end? In other words, would the ERA reach areas in which the Congress does not really want to act?

It is the better part of wisdom to recognize that discriminations not created by law cannot be abolished by law. They must be abolished by changed attitudes in the society which imposes them.

II. DO WOMEN REALLY WANT THE EQUAL RIGHTS AMENDMENT?

One of the recurring myths that surround the equal rights for women amendment is the allegation that all women are for the amendment. This is not so.

The only detailed poll that has been taken on women's feelings on the equal rights question was done by Elmo Roper in September 1971. It is interesting to compare the feelings of women on specific subjects with what the sponsors of the equal rights amendment, including Congresswoman Griffiths, indicate will be the effect of the amendment.

a. In Elmo Roper's poll, 77 percent of the American women disagree "that women should have equal treatment regarding the draft." Yet, there is no doubt that all those interpreting the amendment believe that it will cause women to be drafted and to serve in combat. A *Yale Law Journal* article which the amendment sponsors, including Congresswoman Griffiths, have lauded as explaining how the amendment will work after passage says, "the amendment permits no exception for the military . . . Women will serve in all kinds of units, and they will be eligible for combat duty."

b. In Elmo Roper's poll, 83 percent of American women disagree that "a wife should be the breadwinner if better wage earner than husband." Yet, the supporters of the amendment in the *Yale Law Journal* say that "the equal rights amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex . . . child support sections of the criminal nonsupport laws could not be sustained where only the male is liable for support."

c. In the Elmo Roper poll, 69 percent of American women disagree that "a divorced woman should pay alimony if she has money and her husband hasn't." Yet, the supporters of the amendment say in the *Yale Law Journal* that "the equal rights amendment would not require that alimony be abolished but only that it be available equally to husbands and wives."

In interpreting these figures, it is important to remember that these large percentages of American women do not want the very things the ERA proposes. The primary sponsors of the ERA, including Congresswoman Griffiths, maintain that: A wife should have the legal responsibility for family support if she is the better wage earner; the alimony laws should apply equally to men and women with the result that a divorced woman should pay if she has the money; the draft laws should apply equally to men and women with the result that women will serve in combat.

So what we have with the equal rights amendment is a proposition that will destroy all legal distinctions between men and women and the majority of men do not want this and the majority of women do not want this.

III. UNFAIR EMPLOYMENT DISCRIMINATION

From the information given me by many advocates of the Equal Rights Amendment and from my study of the discriminations which society makes against women, I am convinced that most of the unfair discriminations against them arise out of the different treatment given men and women in the employment sphere. No one can gainsay the fact that women suffer many discriminations in this sphere, both in respect to the compensation they receive and the promotional opportunities available to them. Some of these discriminations arise out of law and others arise out of an absence of law.

When I sought to ascertain from them the specific laws of which they complain, the

advocates of the Equal Rights Amendment have cited certain state statutes, such as those which impose weightlifting restrictions on women, or bar women from operating saloons, or acting as bartenders, or engaging in professional wrestling. Like them, I think these laws ought to be abolished. I respectfully submit, however, that resorting to an amendment to the Constitution to effect this purpose is about as wise as using an atomic bomb to exterminate a few mice.

Let me point out that Congress and the Executive Branch have done much in recent years to abolish discriminations of this character insofar as they can be abolished at the Federal level.

a. Under the Equal Pay Act of 1963 (29 USC 206) Congress made it obligatory for employers to pay men and women engaged in interstate commerce or in the production of goods for interstate commerce equal pay for equal work, irrespective of the number of persons they employ.

b. Under Title VII of the Civil Rights Act of 1964 (42 USC 2000) Congress decreed that there can be no discrimination whatever against women in employment in industries employing 15 or more persons, whose business affects interstate commerce, except in those instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise. Just recently, the Congress has vastly extended the powers of the Equal Employment Opportunity Commission to enforce women's employment rights by allowing the EEOC to seek enforcement orders from the Federal District Court.

c. The President and virtually all of the departments and agencies of the Federal government have issued orders prohibiting discrimination against women in Federal employment, and have provided for affirmative action in the hiring and promotion of women.

Moreover, State Legislatures have adopted many enlightened statutes in recent years prohibiting discrimination against women in employment.

If women are not enjoying the full benefit of this Federal and state legislation and these executive orders of the Federal government, it is due to a defect in enforcement rather than a want of fair laws and regulations. Since the ERA is not self-enforcing, this defect in enforcement will survive the passage of the amendment, and women will still have to bring suits to enforce their rights in the employment sphere with no more remedies than they presently enjoy.

IV. EQUAL RIGHTS AMENDMENT UNNECESSARY BECAUSE OF THE 14TH AMENDMENT

A good case can be made for the proposition that it is not necessary to resort to a Constitutional amendment to abolish state laws which make unfair discriminations between men and women in employment or any other sphere of life. This argument rests upon the Equal Protection Clause of the Fourteenth Amendment which prohibits states from treating differently persons similarly situated, and is now being interpreted by the courts to invalidate state laws which single out women for different treatment not based on some reasonable classification.

To be sure, the Equal Protection Clause may not satisfy the extreme demands of a few advocates of the Equal Rights Amendment who would convert men and women into beings not only equal but alike, and grant them identical rights and impose upon them identical duties in all the relationships and undertakings of life.

It cannot be gainsaid, however, that the Equal Protection Clause, properly interpreted, nullifies every state law lacking a rational basis which seeks to make rights and responsibilities turn upon sex.

My view is shared by legal scholars. Their views on this subject are succinctly expressed by Bernard Schwartz in his recent commentary on the Constitution of the United

States which declares "that a law based upon sexual classification will normally be deemed inherently unreasonable unless it is intended for the protection of the female sex."

The best example of the Supreme Court's willingness to use the 14th Amendment to strike down laws which discriminate against women, thus rendering the ERA unnecessary, is the case of *Reed v. Reed*.

The Reed case

On November 22, 1971, the Supreme Court, in a unanimous decision, gave a strong indication that they would find all unreasonable sex-based classifications to be in violation of the equal protection clause of the 14th Amendment.

In the case of *Reed v. Reed*, 40 L.W. 4013 (1971), the Court found unconstitutional an Idaho statute requiring preference of male relatives over female relatives for appointment as administrators of an intestate's estate. The Court applied the conventional test of reasonableness and found an "arbitrary preference established in favor of males." The Court continued by saying, "By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the equal protection clause."

A *New York Times* editorial on November 23, 1971, construed the decision to mean that:

"The effect of this ruling is to place the fate of various sexually discriminatory laws on a case-by-case basis. This is a slower but preferable way to correct the evils of discrimination than the passage of the proposed equal rights amendment."

Professor Paul Freund of the Harvard Law School has the same view. He stated in a recent letter to me on the significance of the *Reed* case:

"In view of the *Reed* decision, however, I believe more strongly than ever that the subject should be left to be worked out under the equal protection clause, as are other questions of group classification. The equal protection guarantee, together with the ample legislative powers of Congress, is the best avenue to achieve meaningful equality of the sexes under law. This approach is greatly to be preferred to one that would force all the manifold legal relationships to men and women, from coverage under selective service to the obligation of family support, into a mold of mechanical unity."

Professor Phil Kurland of the Chicago Law School and Editor of the *Supreme Court Review* also wrote to me concerning the significance of the *Reed* case. Professor Kurland is convinced that the *Reed* case will pave the way for action by the courts and the legislatures to rectify many of the admittedly unfair discrimination which confront women, but without the dangers resulting from an absolute Constitutional amendment. Professor Kurland said:

"But I am of the view that a sound program of legislative reforms would do more, especially under the mandate now received from the Supreme Court in *Reed v. Reed*, to eliminate more of the grievances that women have against their roles frequently imposed on them in our society. Legislation can get at specific problems in a way that no constitutional provision can."

I believe the *Reed* case indicates that the Supreme Court will act under the 14th Amendment to strike all discriminations of which women now complain and, therefore, I believe the *Reed* case renders the ERA unnecessary.

V. RECENT DEVELOPMENTS IN THE LAW

I firmly believe that recent case law illustrates very dramatically a statement made by Professor Freund last year. He said:

"It seems to me, incidentally, if the energy and dedication that have gone into the movement for the equal rights amendment over the past 40-odd years had been devoted to

the selection and the sponsorship of test cases with respect to some of the unjust State laws that we have heard about this morning, a great deal more accomplishment could be shown with respect to the advancement of equal rights than we can boast of today."

Proponents of the equal rights amendment have frequently cited what they believe to be hesitance on the part of courts to deal with inequalities facing women. The Supreme Court particularly has received criticism on this score.

Yet this term the Supreme Court has heard several cases relating to sex discrimination. On October 19, 1971, the Court heard oral argument in a case challenging a provision of the Illinois Juvenile Court Act which regards unwed mothers as parents but does not consider unwed fathers as parents for the purpose of deciding who shall have custody of illegitimate children. In *re Stanley*, 256 N.E. 2d 814 (Ill. 1970), cert. granted, No. 70-5014. In upholding this provision the Illinois Supreme Court held that this is not a denial of equal protection because the distinction between the class of mothers and the class of fathers "is rationally related to the purposes of the Juvenile Court Act" (presumably to protect the best interests of the children). A case heard by the Court on December 7, 1971, involves the holding of the Louisiana Supreme Court that the absence of women on general venire lists for grand jury duty is not cause for quashing an indictment. *State v. Alexander*, 233 So. 2d 891 (La. 1970), cert. granted, No. 70-5026.

In a case already decided this term, the Supreme Court unanimously struck down an Idaho statute which required preference of male relatives over female relatives as administrators of intestates' estates. *Reed v. Reed*, 40 L.W. 4013 (November 22, 1971). I have discussed this case earlier at length. Chief Justice Burger, writing for the Court, quoted from *Royster Guano Co. v. Virginia*, 153 U.S. 412, 415 (1920), to the effect that a classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Reed*, slip opinion, p. 5.

Last term the Court reached a decision in a landmark case arising under Title VII of the Civil Rights Act of 1964. In the first sex discrimination case arising under Title VII to reach the Supreme Court, a Court of Appeals decision permitting a corporation to distinguish between women with pre-school age children and men with pre-school age children in hiring was reversed. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971). The Supreme Court remanded the case for an evidentiary hearing in the District Court as to whether the family obligations of women with pre-school age children are so relevant to job performance that hiring or other employment distinctions based on the fact of a woman having pre-school age children are justifiable as a bona fide occupational qualification.

I think it is very obvious that the Supreme Court is not ignoring the issue of discrimination against women. Certainly the lower courts are tackling the question and usually deciding in favor of women's equality. Many successful employment discrimination suits have been brought under Title VII. For example, numerous state labor laws have been held invalid as being in conflict with Title VII's mandate for equal employment opportunity. A federal district court has held a California statute prohibiting female employees from lifting objects weighing 50 pounds or more to be in conflict with Title VII and, therefore, void. *Local 246, Utility Workers Union of America, AFL-CIO v. Southern California Edison Co.*, 320 F. Supp. 1262 (C.D. Calif. 1970). In an earlier decision, a California statute regulating hours and condi-

tions of employment for women was struck down as being in conflict with Title VII. *Rosenfeld v. Southern Pac. Co.*, 293 F. Supp. 1219 (C.D. Calif. 1968). Illinois hours limitations for working women have fallen. *Caterpillar Tractor Co. v. Grabiec*, 317 F. Supp. 1304 (S.D. Ill. 1970). Ohio legislation restricting female employment in workshops and factories and prohibiting female employees from lifting anything weighing more than 25 pounds has also been held invalid. *Ridinger v. General Motors Corp.*, 325 F. Supp. 1089 (S.D. Ohio 1971); *Jones Metal Products Co. v. Walker*, 25 Ohio App. 2d 141 (1970).

In addition, certain policies relating to the employment of women have been held to violate Title VII. Recently the Supreme Court declined to review a Seventh Circuit decision holding that a retirement plan which requires female employees to retire at 62, but does not require men to retire until 65 is sex discrimination in violation of Title VII. *Drewrys Limited U.S.A., Inc. v. Bartmoss*, 444 F. 2d 1186 (1971), rev. denied 40 L.W. 3212 (November 9, 1971). The Court also declined to review a Fifth Circuit ruling that an airline company's refusal to hire males as flight cabin attendants is sex discrimination in violation of Title VII. *Pan American World Airways, Inc. v. Diaz*, 442 F. 2d 385 (1971), rev. denied 40 L.W. 3212 (November 9, 1971). In two other cases employers' policies of refusing to hire women for jobs requiring the lifting of weights over a certain amount have been held invalid under Title VII. *Weeks v. Southern Bell Telephone and Telegraph Co.*, 408 F. 2d 228 (5th Cir. 1969); *Bowe v. Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969). An airline's no-marriage rule for stewardesses have been held to constitute sex discrimination under Title VII. *Sprogs v. United Air Lines, Inc.*, 444 F. 2d 1194 (7th Cir. 1971).

Other employment cases favorable to women have been brought under the Equal Pay Act. For example, payment of men at a higher rate than women for the same job has been held to violate the Equal Pay Act. *Schultz v. Wheaton Glass Co.*, 421 F. 2d 259 (3rd Cir. 1970).

Women have also made gains in other areas of sex discrimination. Many of the long-accepted prohibitions and segregations are being removed. An example is state laws prohibiting female bartenders, which have been struck down in New Jersey and California. *Paterson Tavern and Grill Owners Assn., Inc. v. Borough of Hawthorne*, 108 N.J. Super. 433 (1970); *Sailor Inn, Inc. v. Kirby*, 485 F. 2d 529 (1971). In another case a federal district court in New York held that the refusal of an ale house to serve women violated the equal protection clause of the Fourteenth Amendment. *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593 (1970).

Other suits challenging the treatment of women on equal protection grounds have also been successful. A Pennsylvania statute providing for longer prison terms for women than for men committing the same crimes was held to violate equal protection. *Commonwealth v. Daniel*, 430 A. 2d 400 (1968). (See also, *U.S. ex rel. Robinson v. York*, 281 F. Supp. 8 (D. Conn. 1968), in which a federal court struck down a similar Connecticut statute.) A school board regulation requiring women teachers to take a leave of absence at the end of the fifth month of pregnancy has been held to violate equal protection.

Cohen v. Chesterfield County School Board, 326 F. Supp. 1159 (E.D. Va. 1971). In *Kirstein v. Rectors and Visitors of the University of Virginia*, 309 F. Supp. 184 (E.D. Va. 1970), a three-judge federal court held that the denial to women of education equal to that offered men at the University of Virginia at Charlottesville violated equal protection. The court approved a plan setting quotas for the admission of women.

The Justice Department has taken action to aid women in fighting discrimination. In an important suit against Libbey-Owens-Ford, the Attorney General won a decree giving women opportunity to achieve promotions and advancement on the same basis as male employees.

These events are not typical of a society which does not care to eliminate discrimination. Nor are they characteristic of a judicial system determined to maintain the status quo.

VI. HOW WOULD THE ERA BE INTERPRETED

If the Equal Rights for Women amendment is approved, I believe that the Supreme Court will reach the conclusion that the ERA annuls every existing Federal and state law making any distinction between men and women however reasonable such distinction might be in particular cases, and forever robs the Congress and the legislatures of the fifty states of the Constitutional power to enact any such laws at any time in the future. I am not alone in entertaining this fear.

When the so called Equal Rights Amendment was under consideration in 1953, Roscoe Pound of the Harvard Law School and other outstanding scholars joined one of America's greatest legal scholars, Paul A. Freund of the Harvard Law School, in a statement opposing the Equal Rights Amendment upon the ground that they feared that this devastating interpretation might be placed upon it if it should be adopted. This statement made these indisputable observations:

"If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States. Every statutory and common law provision dealing with the manifold relation of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to a widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries.

"Not only is the range of the amendment of indefinite extent, but, even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships. A more flexible view, permitting reasonable differentiation, can hardly be regarded as the object of the proposal, since the Fourteenth Amendment has long provided that no state shall deny to any person the equal protection of the laws, and that Amendment permits reasonable classifications while prohibiting arbitrary legal discrimination. If it were intended to give the courts the authority to pass upon the propriety of distinctions, benefits and duties as between men and women, no new guidance is given to the courts, and this entire subject, one of unusual complexity would be left to the unpredictable judgments of courts in the form of constitution decisions.

"Such decisions could not be changed by act of the legislature. Such a responsibility upon the courts would be doubtless as unwelcome to them as it would be inappropriate. As has been stated, however, the proposal evidently contemplates no flexibility in construction but rather a rule of rigid equality. This branch of the dilemma is as repelling as the other."

After analyzing in some detail the laws whose validity might be jeopardized by the

Equal Rights Amendment, the statement concluded with these observations:

"The basic fallacy in the proposed amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity of human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty."

Appearing before the Senate Judiciary Committee hearings in September, 1970, it was obvious that Professor Freund has the same view today of the proposed amendment. In a colloquy with me, Professor Freund had the following to say:

Senator ERVIN. I also interpret your statement and what you have said to indicate a conviction on your part that there is grave danger that the courts will interpret the House-passed equal rights amendment, if it is ratified by the requisite number of states, as depriving Congress of the powers it now has under the equal protection clause to adopt legislation which is for the benefit of women?

Mr. FREUND. Yes. I think that is quite right because there must be intended some more absolute standard of equality than the equal protection clause embodies. That would be the point of the amendment.

Senator ERVIN. And if the House-passed equal rights amendment were ratified by the states, thus made a part of the Constitution, it is susceptible of interpretation that it would require the courts to strike down all legal distinctions made between men and women, no matter how reasonable and necessary those distinctions might be?

Mr. FREUND. That is my understanding of what the language as well as the purpose of the sponsors is today.

Professor Philip Kurland of the Chicago Law School also arrived at the same conclusion as Professor Freund. He said:

Professor KURLAND. I would think that the amendment as it is now simply provides that classification by sex by any governmental action is invalid.

Senator ERVIN. In other words your interpretation of the amendment as presently phrased is that it would be probably interpreted to eliminate sex as a basic for classification in legislation?

Professor KURLAND. If I were charged with the interpretation of the language, that would be the conclusion that I would reach.

Senator ERVIN. If that interpretation would be correct, the law which exists in North Carolina and virtually every other state of the Union which requires separate restrooms for boys and girls in public schools would be nullified, would it not?

Professor KURLAND. That is right, unless the separate but equal doctrine is revived.

Perhaps one of the best guides to a general interpretation of the Equal Rights Amendment can be found in the *Yale Law Journal* article of April, 1971. That article has been called a "masterly piece of scholarship" by Senator Bayh and has been cited by Congresswoman Griffiths, the primary sponsor of the ERA in the House of Representatives, to "help you understand the purposes and effects of the ERA . . ." The *Yale Law Journal* gives us the following guidelines for the general interpretation of the ERA:

1. "The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of any person by the law may not

be based upon the circumstance that such person is of one sex or the other." (p. 889) " . . . the principle of the Amendment must be applied comprehensively and without exceptions." (p. 890)

2. "Only an unequivocal ban against taking sex into account supplies a rule adequate to achieve the objectives of the Amendment." (p. 892) " . . . prohibition against the use of sex as a basis for differential treatment applies to all areas of legal rights." (p. 891) " . . . From this analysis it follows that the constitutional mandate must be absolute." (p. 892)

3. "Our legal structure will continue to support and command an inferior status for women so long as it permits any differentiation in legal treatment on the basis of sex." (p. 873) " . . . Equality of rights means that sex is not a factor." (p. 892)

VII. SPECIFIC AREAS AFFECTED BY THE EQUAL RIGHTS AMENDMENT

Time and space preclude me from an attempt to picture in detail the constitutional and legal chaos which would prevail in our country if the Supreme Court should feel itself compelled to place upon the Equal Rights Amendment the devastating interpretation feared by these legal scholars.

For this reason, I must content myself with merely suggesting some of the terrifying consequences of such an interpretation.

While the amendment would affect all areas of our society, I will mention only a few of the specific areas including: the military, the criminal law, privacy, domestic relations, and protective labor legislation.

VIII. MILITARY

The impact of the ERA on the military will be massive.

The Congress and the legislatures of the various states have enacted certain laws based upon the conviction that the physiological and functional differences between men and women make it advisable to exempt or exclude women from certain arduous and hazardous activities in order to protect their health and safety.

Among Federal laws of this nature are the Selective Service Act, which confines compulsory military service to men; the acts of Congress governing the voluntary enlistments in the armed forces of the nation which restrict the right to enlist for combat service to men; and the acts establishing and governing the various service academies which provide for the admission and training of men only. There is no question that these laws will be abolished. As Professor Paul Freund of the Harvard Law School said, "And so women must be admitted to West Point on a parity with men; women must be conscripted for military service equally with men . . ." Professor Phil Kurland of the Chicago Law School agrees.

The position of the Justice Department and the Defense Department is that women will be subject to the draft. In a letter to Senator Bayh dated February 24, 1972, the General Counsel for the Defense Department, J. Fred Buzhardt, dealt with some of the problems which would be caused by the ERA in the military. Mr. Buzhardt said:

"Further, there is the possibility that assigning men and women together in the field in direct combat roles might adversely affect the efficiency and discipline of our forces.

"On the other hand, if women were not assigned to duty in the field, overseas, or on board ships, but were entering the armed forces in large numbers, this might result in a disproportionate number of men serving more time in the field and on board ship because of a reduced number of positions available for their reassignment.

"If this amendment allowed no discrimination on the basis of sex even for the sake of privacy, we believe that the resulting shar-

ing of facilities and living quarters would be contrary to prevailing American standards.

"Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce."

In a letter to Senator Ervin, Deputy Assistant Secretary of Defense Don R. Brazier said that Defense had not made any estimates of costs on changing the military to conform with the Equal Rights Amendment. Furthermore, Mr. Brazier said:

"The Department has not made such estimates and without specific programs for such 'equal' service, it is impossible to make any estimate. One of the major areas that would contribute to increased costs would be separate facilities, both in terms of living quarters, as well as working facilities in areas where women are not currently stationed."

"Until a definitive plan is developed indicating where and under what circumstances women would serve in isolated areas, with combatant forces, aboard ships, etc., it is not possible to make a definitive estimate of costs. If extensive additional facilities or modifications to current facilities were required, the costs could be considerable."

A very complete analysis of the ERA's effect on the military was compiled in the *Yale Law Journal* in April 1971. The significance of this article that Congresswoman Griffiths has said that the article "... will help you understand the purposes and effects of the Equal Rights Amendment" and Senator Bayh has called it a "masterpiece of scholarship." Thus, the supporters of the amendment feel that it will have the following effect on the military and I agree with them. No clearer or more unique history of legislative intent can be presented of the amendment and the military because both the opponents and the proponents agree on the amendment's effect in this area.

Significant excerpts from the *Yale Law Journal* which is supported by the amendment's proponents are as follows:

1. "The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military." (p. 969)

2. "Women will serve in all kinds of units, and they will be eligible for combat duty. The double standard for treatment of sexual activity of men and women will be prohibited." (p. 978)

3. "Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women." (p. 969)

4. "Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination." (p. 969)

5. "These changes will require a radical restructuring of the military's views of women." (p. 969)

6. "The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men." (p. 970)

7. "A woman will register for the draft at the age of eighteen, as a man now does." (p. 971)

8. "Under the Equal Rights Amendment, all standards applied through (intelligence tests and physical examinations) will have to be neutral as between the sexes." (p. 971)

9. "The military will clearly have sufficient time during the period after ratification to make the minor adaptations, such as the expansion of gynecological services, necessary to comply with the statute." (p. 971)

10. "First, height standards will have to be revised from the dual system which now exists." (p. 971)

11. "The height-weight correlations for the sexes will also have to be modified." (p. 972)

12. Deferment policy "could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female would be deferred." (p. 973)

13. "If the rules continue to require discharge of women with dependent children, then men in a similar situation will also have to be discharged. . . . The nondiscriminatory alternative is to allow both men and women with children to remain in the service and to take their dependents on assignments in noncombat zones, as men are now permitted to do." (p. 975)

14. "Distinctions between single and married women who become pregnant will be permissible only if the same distinction is drawn between single and married men who father children." (p. 975)

15. "Thus, if unmarried women are discharged for pregnancy, men shown to be fathers of children born out of wedlock would also be discharged. Even in this form such a rule would be suspect under the Amendment, because it would probably be enforced more frequently against women. A court will therefore be likely to strike down the rule despite the neutrality in its terms, because of its differential impact." (p. 975)

16. "Under the Equal Rights Amendment the WAC would be abolished." (p. 976)

17. "Women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations. . . . there is no reason to prevent women from doing these jobs in combat zones." (p. 977)

18. "No one would suggest that . . . women who serve can avoid the possibility of physical harm and assault. But it is important to remember that all combat is dangerous, degrading and dehumanizing." (p. 977)

19. "Male officers are provided a dependent's allowance based on their grade and the number of dependents. . . . The Equal Rights Amendment will recognize 'the husband of a female officer . . . as a dependent.'" (p. 978)

20. "Athletic facilities will also have to be made available to women personnel." (p. 978)

IX. CRIMINAL LAW

Because of different physical characteristics, and health considerations, and other reasons, legislatures have adopted some criminal laws which apply to only one sex or the other or treat men and women differently in some degree. Because the Equal Rights Amendment will forbid any legal distinctions between men and women, all existing and future criminal laws of this nature would be nullified.

As in several areas, a good review of the types of laws that will be changed by the ERA was discussed in the April 1971 issue of the *Yale Law Journal*. This article has been cited with approval by the proponents of the ERA and the statements which I have excerpted should constitute a good example of what we could expect after passage of the act in the area of criminal law. The excerpts from the *Yale Law Journal* are as follows:

1. "Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike." (p. 966)

2. "Courts will not likely invalidate sodomy or adultery laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike." (p. 962)

3. "Seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws. . . . The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes." (p. 954)

4. "The statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law. . . . suffer from a double defect under the Equal Rights Amendment." (p. 957)

5. "To be sure, the singling out of women probably reflects sociological reality. . . . Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard. . . ." (p. 958)

6. "Adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment." (p. 961)

7. "Courts may be expected to hold that laws which confine liability for prostitution to women only are invalid under the Equal Rights Amendment." (p. 963)

8. "Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so the ERA would require invalidation of laws specially designed to protect women from being forced into prostitution." (p. 964)

9. "A court would probably resolve doubts about congressional intent by striking down the Federal White Slave Traffic—Mann Act." (p. 965)

X. DOMESTIC RELATIONS LAWS

The common law and statutory law of the various states recognize the reality that many women are homemakers and mothers, and by reason of the duties imposed upon them in these capacities, are largely precluded from pursuing gainful occupations or making any provision for their financial security during their declining years. To enable women to do these things and thereby make the existence and development of the race possible, these state laws impose upon husbands the primary responsibility to provide homes and livelihoods for their wives and children, and make them criminally responsible to society and civilly responsible to their wives if they fail to perform this primary responsibility. Moreover, these state laws secure to wives dower and other rights in the property left by their husbands in the event their husbands predecease them in order that they may have some means of support in their declining years.

If the Equal Rights Amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, it would nullify all existing and all future laws of this kind.

As with the military, a good analysis of what the amendment will accomplish in the area of domestic relations was set out in the *Yale Law Journal* which has been fully endorsed by Congresswoman Martha Griffiths and other proponents of the ERA. As I have stated earlier, no clearer legislative intent can be presented because I agree with the amendment's proponents that the ERA will have the following effects.

Significant excerpts from the *Yale Law Journal* which is supported by the proponents of the ERA in the area of domestic relations are as follows:

1. "The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex." (p. 953)

2. "Thus, common law and statutory rules requiring name change for the married women would become legal nullities." (p. 940)

3. "These states could conform to the

Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both." (p. 940)

4. "The Amendment would also prohibit the states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's." (p. 941)

5. "In ninety per cent of custody cases the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent." (p. 953)

6. "physical capacity to bear children can no longer justify a different statutory marriage age for men and women." (p. 939)

7. "mere estimates of emotional preparedness founded on impressions about the 'normal' adolescent boy and girl are based on the kind of averaging which the Equal Rights Amendment forbids." (p. 939)

8. "The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage." (p. 940)

9. "a court would do away with the rule that refusal to accompany or follow a husband to a new domicile amounts to desertion or abandonment." (p. 942)

10. "A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home." (p. 942)

11. "the traditional rule is that the domicile of legitimate children is the same as their father's . . . The Equal Rights Amendment would not permit this result." (p. 942)

12. "In all states husbands are primarily liable for the support of their wives and children . . . the child support sections of the criminal nonsupport laws . . . could not be sustained where only the male is liable for support." (p. 944 and 945)

13. "The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex." (p. 945)

14. "Two different systems have been adopted in the United States for distributing property rights within a family—the community property system and the common law system . . . As both systems currently operate, they contain sex discriminatory aspects which would be changed under the Equal Rights Amendment." (p. 946)

15. "Under the Equal Rights Amendment, laws which . . . favor the husband as manager (of community property) in any way, would not be valid." (p. 947)

16. "All states except North Dakota and South Dakota give women a nonbarrable share in her husband's estate, but a number of states fail to give the husband a corresponding legal claim in his wife's estate . . . the discriminatory laws would either be invalidated or extended." (p. 948)

17. "a court could invalidate (many grounds for divorce) without doing any serious harm to the overall structure of the states' divorce laws . . . These are pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband, wife's unchaste behavior, husband's vagrancy, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, indignities by husband to wife's person, and willful neglect by husband." (p. 950)

18. "Like the duty of support during marriage and the obligation to pay alimony in the case of separation or divorce, nonsupport would have to be eliminated as a ground for divorce against husbands only . . ." (p. 951)

19. "The laws that grant a husband a divorce because at the time of marriage he did not know his wife was pregnant by an-

other man would be subject to strict scrutiny under the unique physical characteristics tests." (p. 951)

20. "The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives." (p. 952)

21. "the laws could provide support payments for a parent with custody of a young child who stays at home to care for that child so long as there was no legal presumption that the parent granted custody should be the mother." (p. 952)

22. The ERA could require "for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for his reasonable needs and is unable to support himself through appropriate employment." (p. 952)

XI. PROTECTIVE LABOR LEGISLATION

Many states and the Federal government have enacted labor legislation which protects women from certain forced activities. These protections were not always easy to develop. As Margaret Mead, noted anthropologist, said to a AFL-CIO meeting in March, 1971, "In the beginning of mining, there were women down those mines and children . . . we got the women and children out of the mines you know." Dr. Mead then goes on to say, "I've been against the equal rights amendment always."

The largest labor organization in the country, the AFL-CIO has recommended that Congress not pass the Equal Rights Amendment for the same reason that Margaret Mead opposed it: The adverse effect the amendment will have on hard-won protective legislation for women.

In its Resolution No. 122, the AFL-CIO states:

"We continue opposition to the so-called equal rights amendment as an unnecessary addition to the Constitution, ultimately more harmful than helpful to the legal rights of women."

Prior to the adoption of the resolution, the executive council of the AFL-CIO, in a report to its convention, said:

"We have opposed the equal rights amendment to the Constitution because of its potentially destructive impact on State labor legislation for women workers . . . Experience, to date, shows that 'equality' has been used to remove labor law protections for women, rather than to extend them or adapt them to man. The proposed equal rights amendment would render all protective labor laws for women workers unconstitutional, as well as any other laws treating the sexes differently. Such laws, for example, include marriage laws which place primary responsibility for family support on husbands and fathers."

A librarian at the University of California Library, Mrs. Laurel Burley, has written on the drastic consequences which would result to the protective labor laws for women if the ERA passes. Those upper-class, well-educated women who are pushing so hard for this amendment should ponder Mrs. Burley's words. She states that:

"The major danger in the proposed ERA lies in the fact that it would in one fell swoop invalidate all protective legislation enacted by the States to protect working women from exploitative employers . . . Protective legislation not only sets maximum hours and minimum wages standards, but also mandates such provisions as rest areas, toilet facilities, and elevators, adequate lighting and ventilation, rest and meal breaks (including the right to eat one's meal away from the immediate work area), adequate drinking water (important for women and children who are farmworkers), and protective garments and uniforms."

Mrs. Burley feels that some of the results of court action under Title VII of the 1964 Civil Rights Act are indicative of the changes

which will be brought about to the extreme because of the Equal Rights Amendment. On this point, she states:

"Some idea of what might be expected were the ERA to pass can already be seen in the use being made of Title VII of the Civil Rights Act. In late 1969 Fibreboard Corporation in Antioch, California began to force women to work 16 hours a day and to lift backbreaking weights. Pacific Telephone in 1970 began ignoring state protective legislation relating to minimum hours. In fall 1970 Oregon took away the right of women to have two ten-minute rest breaks in an eight-hour day; and another large California corporation, Crown Zellerbach, began denying meal breaks to both men and women working in the Antioch plant. In summer 1971 a U.S. Court of Appeals struck out the sections of the California Labor Code regulating maximum weight lifting and the eight-hour day, 48-hour week for women. All these actions were justified on the basis that Title VII and EEOC guidelines superseded state protective legislation. Such instances are mounting at an incredible rate. On the basis of Title VII, 17 states have either totally or substantially annulled or repealed protective legislation covering women. The ERA as it stands will add the finishing touch."

As in other areas, I believe the *Yale Law Journal* article which has been adopted by Congresswoman Griffiths as "explaining the ERA" should be read to determine its effects on labor legislation. Excerpts from the article state that:

1. "Under the Equal Rights Amendment, courts are thus not likely to find any justification for the continuance of laws which exclude women from certain occupations." (p. 929)

2. "Laws which require employers to impose leave on pregnant employees for a specified period before and after childbirth, without providing job security or retention of accrued benefits, such as seniority credits . . . would fall." (p. 929) The article cites as an example which will be struck down in every state, a school board regulation imposing maternity leave at least four months prior to the expected birth of her child." (p. 931)

3. "There is little reason to doubt, therefore, that courts will invalidate weightlifting regulations for women under the Equal Rights Amendment." (p. 935)

4. "This result (to invalidate maximum hours which apply only to women) would also be predicted from principles of statutory construction under the Equal Rights Amendment." (p. 936)

5. "The courts are likely to . . . equalizing both sexes under the Equal Rights Amendment by invalidating (a law protecting women from coerced overtime)." (p. 936)

6. "Laws which restrict or regulate working conditions would probably be invalidated." (p. 936)

XII. MISCELLANEOUS

Because of the broad nature of the ERA, there is really no way to tell just how far it will reach. As Professor Paul Freund of the Harvard Law School said, "The range of potential litigation is too great to be readily foreseen . . ." Therefore, I believe it would be profitable to mention just several random examples which were brought out in the April 1971 *Yale Law Journal*. As I have mentioned, before, the *Yale Law Journal* is unique because it provides a very minimum level of change which the ERA will bring about. This is true because of the strong support of the article by Congresswoman Griffiths and other supporters of the ERA. Under miscellaneous examples, the article mentions:

1. "the government cannot rely upon the administrative technique of grouping or averaging where the classification is by sex . . . whatever the price in efficiency, the classification must be made on some other basis." (p. 891)

2. "It is obvious that the marginal relationship of the unique physical characteristics of pregnancy to the problem of absenteeism would require invalidation . . . of a government regulation to reduce absenteeism by barring women from certain jobs."

3. Men will get extensive leave for child rearing because "if only women can get extensive leave for child rearing it becomes economically impossible for men to stay at home to care for children while their wives work." (p. 897)

4. "A rule allowing sick leave only to mothers when a member of their household is sick is a prohibited sex classification." (p. 898)

5. "A law might prohibit adults with primary responsibility for child care from working in managerial jobs, on the grounds that the function of caring for children was inconsistent with substantial occupational responsibility. Such a law or government regulation would constitute a serious evasion of the Equal Rights Amendment." (p. 898)

6. "Protection against indirect, covert or unconscious sex discrimination is essential to supplement the absolute ban on explicit sex classification of the Equal Rights Amendment." (p. 900)

7. "Thus the courts have power to grant affirmative relief in framing decrees in particular cases . . . such decrees could provide remedies for past denial of equal rights which take into account sex factors and give special treatment to the group discriminated against." (p. 904)

8. "Affirmative action may appear, paradoxically, to conflict with the absolute nature of the Equal Rights Amendment. But where damage has been done by a violator who acts on the basis of a forbidden characteristic, the enforcing authorities may also be compelled to take the same characteristic into account in order to undo what has been done." (p. 904)

9. "There is no doubt that the Equal Rights Amendment would eliminate differentiation on account of sex in the public schools and public university systems." (p. 906)

10. "It would seem clear that the basic principles of state action would, as a general proposition, require that the state eliminate male domination from the educational system." (p. 907)

11. "States which grant jury service exemptions to women with children will either extend the exemption to men with children or abolish the exemption altogether." (p. 920)

XIII. RIGHT TO PRIVACY

I believe that the absolute nature of the Equal Rights Amendment will, without a doubt, cause all laws and state-sanctioned practices which in any way differentiate between men and women to be held unconstitutional. Thus, all laws which separate men and women, such as separate schools, restrooms, dormitories, prisons, and others will be stricken. Also, men and women will be thrown together with no separation on the grounds of sex in the military.

The proponents of the ERA mention that the Constitutional right to privacy will protect and keep separate items such as public restrooms; however, this assertion overlooks the basic fact of constitutional law construction: The most recent constitutional amendment takes precedence over all other sections of the Constitution with which it is inconsistent. Thus, if the ERA is to be construed absolutely, as its proponents say, then there can be no exception for elements of publically imposed sexual segregation on the basis of privacy between men and women.

Even assuming the very unlikely result that privacy will allow segregation of the sexes in places like the military, Fred Buzhardt, General Counsel of the Defense Department, mentioned the physical impossibility of providing this always in the military. Mr. Buzhardt said:

"Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce."

Professor Paul Freund of the Harvard Law School testified about this matter before the Senate Judiciary Committee in 1970. After stating that the amendment would be absolute, Professor Freund said that it would follow that the ERA "would require that there be no segregation of the sexes in prison, reform schools, public restrooms, and other public facilities."

Professor Phil Kurland, Editor of the *Supreme Court Review* and a Professor of Law at the University of Chicago Law School stated before the Judiciary Committee:

Senator ERVIN. The law which exists in North Carolina and in virtually every other state of the Union which requires separate restrooms for boys and girls in public schools would be nullified, would it not?

Professor KURLAND. That is right, unless the separate but equal doctrine is revived.

Senator ERVIN. And the laws of the states and the regulations of the Federal government which require separate restrooms for men and women in public buildings would also be nullified, would it not?

Professor KURLAND. My answer would be the same.

As Professors Freund and Kurland indicate there is no qualification of the ERA for the privacy of women just as there will be none for the draft or protective labor laws.

A few examples in our society where the privacy aspect of the relationship between men and women would be changed are:

1. Police practices by which a search involving the removal of clothing will be able to be performed by members of either sex without regard to the sex of the one to be searched.

2. Segregation by sex in sleeping quarters of prisons or similar public institutions would be outlawed.

3. Segregation by sex of living conditions in the armed forces would be outlawed. This includes close quarter living in combat zones and foxholes.

4. Segregation by sex in hospitals would be outlawed.

5. Physical exams in the armed forces will have to be carried out on a sex neutral basis.

There are, of course, numerous other examples which flow from the absolute nature of the Equal Rights for Women amendment.

XIV. THE RADICAL EFFECT OF THE EQUAL RIGHTS AMENDMENT ON THE AMERICAN SOCIAL STRUCTURE

In the hearings before the Senate Judiciary Committee last year, Professor Paul Freund of the Harvard Law School testified that:

"Indeed, if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation. Whether the proponents of the amendment shrink from these implications is not clear."

Like Professor Freund, it is not clear to me either if the proponents of the amendment shrink from these implications. This matter illustrates as well as any the radical departures from our present system that the ERA will bring about in our society. Speaking in opposition to the ERA, Professor James White of the Michigan Law School also mentioned certain bizarre results which would flow from passage of the ERA. Professor White said:

"With the exception of Illinois and perhaps a few other states, there are laws on the books which make it a crime to engage in certain kinds of homosexual activity. First of all, I suppose the amendment would bring in question all that law . . . I think the question is, is this the way we should do away

with it or should we allow the states to control this themselves?"

Professor White continued that there would certainly be litigation on the sexual requirements of the marriage ceremony and that "conceivably a court would find that the State had to authorize marriage and recognize marital legal rights between members of the same sex." At that point in the testimony, Professor White's comments centered on the effect on the community property laws of homosexual marriages. I wondered about the effect on adoption procedures.

Professor of Neurology at the Yale Medical School, Dr. Jonathan H. Pincus, has asked the following question: "Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure?" In a statement in opposition to the ERA, Dr. Pincus goes on to answer his question in the affirmative, and in his discussion he sheds some real light on the radical changes which will be made in our social structure.

At the present time in all states husbands are primarily liable for the support of their wives and children but, as Representative Griffiths' approved article in the *Yale Law Journal* states, "The ERA would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex." Dr. Pincus is very concerned about the effects of this removal of a husband's responsibility. Dr. Pincus said:

"It seems to me that the removal of legal responsibility from a man for supporting a family, giving the family a name and protecting his daughters from the sort of influences the U.S. Army might have in store for them before marriage is likely to have some effect on the manner in which men relate to their wives and children and vice versa; those traditional ties will be weakened."

Dr. Pincus feels that "a solid happy family life is the foundation of mental health and happiness," and as to the effects of the ERA on this family life, he goes on to state:

"I would predict that the Equal Rights amendment and many of the other goals of its proponents will bring social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties may also lead to increased rates of alcoholism, suicide and, possibly, sexual deviation."

Whether or not one agrees with the predictions of Dr. Pincus, I believe he is asking very genuine questions which should be discussed before the Constitution is amended. Before we begin tinkering with the very subtle mechanisms of family relationships and social responsibilities, should we not consider that we might in fact be passing a Tonkin Gulf Resolution of the American social structure?

While I believe that any unfair discriminations which the law has created against women should be abolished by law, I have the abiding conviction that the law should make such distinctions between them as are reasonably necessary for the protection of women and the existence and development of the race.

I share completely this recent observation by Mr. Bernard Swartz: "Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact."

The late Justice Felix Frankfurter, in an eloquent statement in the *New Republic* magazine many years ago put it a different way. Justice Frankfurter said:

"Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole

position in a meaningless and mischievous phrase about "equal rights."

Let us consider for a moment whether there be a rational basis for reasonable distinctions between men and women in any of the relationships or undertakings of life.

When He created them, God made physiological and functional differences between men and women. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. Some wise people even profess the belief that there may be psychological differences between men and women.

To say these things is not to imply that either sex is superior to the other. It is simply to state the all important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The physiological and functional differences between men and women empower men to beget and women to bear children, who enter life in a state of utter helplessness and ignorance, and who must receive nurture, care, and training at the hands of adults throughout their early years if they and the race are to survive, and if they are to grow mentally and spiritually. From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care, and training to their children during their early years.

In this respect, custom and law reflect the wisdom embodied in the ancient Yiddish proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist.

For this reason, any country which ignores these differences when it fashions its institutions and makes its laws is woefully lacking in rationality.

Our country has not thus far committed this grievous error. As a consequence, it has established by law the institutions of marriage, the home, and the family, and has adopted some laws making some rational distinctions between the respective rights and responsibilities of men and women to make these institutions contribute to the existence and advancement of the race.

It may be that times are changing and more and more women will leave the home to compete in the business and professional community. However, I would like to call the Senate's attention to the remarks of Professor Phil Kurland of the University of Chicago Law School on this point. He said:

"Times have changed in such a way that it may well be possible for the generation of women now coming to maturity, who had all the opportunities for education afforded to their male peers and who had an expectation of opportunities to put education to the same use as their male peers, to succeed in a competitive society in which all differences in legal rights between men and women were wiped out. There remains a very large part of the female population on whom the imposition of such a constitutional standard would be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keepers of their homes. There are a multitude of women who still find fulfillment in this role. In the eyes of some, this may be unfortunate, but it is true. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Certainly the desire to open opportunities to some need not be bought at the price of removal of legal protections from others."

XV. THE EQUAL RIGHTS AMENDMENT: A CASE STUDY IN ONE SPECIFIC AREA

One of the most interesting assertions of the article in the *Yale Law Journal* which Representative Griffiths says "explains the workings of the amendment," is the statement that:

"The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage . . . The states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both . . . thus common law and statutory rules requiring name change for the married woman would become legal nullities."

The effects of this requirement on the record-keeping demanded by our society would be staggering. Imagine an attorney searching a land title with this type of last-name system.

The wisdom of allowing a state to determine that a wife's legal name shall be that of her husband has just been upheld 8-0 in a per curiam decision of the Supreme Court in the case of *Forbush v. Alabama*. The interest of the State in maintaining control over licenses and requiring the most efficient way to do so should be obvious to everyone, as it was to all the members of the Supreme Court. But it's not obvious to the proponents of the ERA who want to abolish all legal pronouncements favoring the husband's surname.

Just a cursory check of only a very few of the laws of the states will indicate just how far-reaching the Equal Rights Amendment will be in this area alone. Most states appear to recognize the common law rule that a wife assume her husband's surname. *E.g. People ex. rel. Rago v. Lipsky*, 327 Ill. App. 63, 63 N.E. 2d 642 (1945); *Freeman v. Hawkins*, 77 Tex. 498, 14 S.W. 364; *Chapman v. Phoenix National Bank of the City of New York*, 85 N.Y. 437 (1881); *Bacon v. Boston Electric Railway Co.*, 256 Mass. 30, 152 N.E. 35 (1926).

In addition, many state statutes are based upon the assumption that a woman assumes her husband's surname upon marriage. For example, statutes relating to the issuance of driver's licenses often include a provision requiring licensed drivers to notify a state agency of changes in name resulting from marriage. *See, e.g. Colo. Rev. Stat. Ann. Sec. 13-4-17; Fla. Stat. Ann. Sec. 322.19; Ill. Ann. Stat. Ch. 95½, Sec. 6-116; Ind. Ann. Stat. Sec. 47-2710; Kan. Stat. Ann. Sec. 8-248; Ky. Rev. Stat. Sec. 186.540; Me. Rev. Stat. Ann. tit. 29, Sec. 546; Minn. Stat. Ann. Sec. 171.11; Mont. Rev. Codes Ann. Sec. 31-140; N.M. Stat. Ann. Sec. 64-13-53; N.D. Century Code Sec. 39-06-20; Okla. Stat. Ann. tit. 47, Sec. 6-116; R.I. Gen. Laws Ann. Sec. 31-10-32; S.C. Code Ann. Sec. 46-170; Tenn. Code Ann. Sec. 59-708; Tex. Rev. Civ. Stat. Ann. Art. 6687b, Sec. 20; W. Va. Code Ann. Sec. 173-2-13.*

State statutes relating to divorce often authorize courts to change a woman's name upon divorce. *See, e.g. Alaska Stat. Sec. 09-55.010 (no court order necessary); Arizona Rev. Stat. Ann. Sec. 25-319; Ark. Stat. Ann. Sec. 34-1216; Cal. Civ. Code Sec. 4457 (annulment), 4521 (dissolution); Conn. Gen. Stat. Ann. Sec. 46-21; Del. Code Ann. tit. 3, Sec. 1536; D.C. Code Ann. Sec. 16-915; Ga. Code Ann. Sec. 30-121; Hawaii Rev. Laws Sec. 574-5; Ill. Ann. Stat. ch. 40, Sec. 17; Ind. Ann. Stat. Sec. 3-1225; Kan. Stat. Ann. Sec. 60-1610; Ky. Rev. Stat. Ann. Sec. 403.060 (if divorce obtained by wife); Me. Rev. Stat. Ann. tit. 19, Sec. 752; Mass. Gen. Laws Ann. ch. 208, Sec. 23; Mich. Comp. Laws Ann. Sec. 552.391 (if no minor children); Minn. Stat. Ann. Sec. 518.27 (if wife obtained divorce); Mo. Ann. Stat. Sec. 452.100 (if wife obtains divorce); Nev. Rev. Stat. Sec. 125.130; N.J. Stat. Ann. Sec. 2A:34-21; N.C. Gen. Stat. Sec.*

50-12; Okla. Stat. Ann. tit. 12, Sec. 1278 (if husband at fault); Ore. Laws 1971, ch. 280, Sec. 13; Pa. Stat. Ann. tit. 23, Sec. 98 (woman may elect to use maiden name after divorce); R.I. Gen. Laws Ann. Sec. 15-5-17 (if wife obtains divorce); S.C. Code Ann. Sec. 20-117; Tex. Rev. Civ. Stat. art. 5931 (either party may change name upon divorce); Vt. Stat. Ann. tit. 15, Sec. 557 (if wife obtains divorce); Va. Code Ann. Sec. 20-121; Wash. Rev. Code Ann. Sec. 26.08.130; W. Va. Code Ann. Sec. 48-2-23 (if no children); Wis. Stat. Ann. Sec. 247.20 (if no children and no alimony).

State voter registration laws often include provisions requiring women to reregister when their names are changed by marriage. *See, e.g. Colo. Rev. Stat. Ann. Sec. 49-4-19; Del. Code Ann. tit. 15, Sec. 1750; Ill. Ann. Stat. ch. 46, Sec. 6-54; Ind. Ann. Stat. Sec. 29-3428 (but women may vote or run for office under professional name); Kan. Stat. Ann. Sec. 25-2316; Ky. Rev. Stat. Ann. Sec. 117.735; La. Rev. Ann. Secs. 18:41, 234, 241; Me. Rev. Stat. Ann. tit. 21, Secs. 638, 831 (notification of change required); Md. Ann. Code art. 33 Secs. 3-9, 3-18; Mass. Gen. Laws Ann. ch. 51 Sec. 2 (notification); Neb. Rev. Stat. Sec. 32-216; Nev. Rev. Stat. Sec. 293.517; N.J. Stat. Ann. Sec. 19:31-13; N.M. Stat. Ann. Sec. 3-4-5; Ohio Rev. Code Ann. Sec. 3503.19 (not necessary to reregister if name is not changed upon marriage); Ore. Rev. Stat. Secs. 247.290, 247.440; R. I. Gen. Laws Ann. Sec. 17-9-18 (notification); S.D. Comp. Laws Ann. Sec. 12-4-18; Tenn. Code Ann. Secs. 2-305; Va. Code Ann. Sec. 24-1-51; Wash. Rev. Code Ann. Sec. 29.10.040.*

State laws regulating notaries public also often contain provisions involving name changes resulting from marriage. *See, e.g. Iowa Code Ann. Sec. 77.12 (married female notaries may continue to use maiden names); N.J. Stat. Ann. Sec. 52:7-7 (married female notaries to use hyphenated name); Pa. Stat. Ann. tit. 57, Sec. 156 (female married notaries must notify state agency of change of name); Va. Code Ann. Sec. 55-117 (female married notaries to indicate maiden name); Wyo. Stat. Ann. Sec. 32-2 (female married notaries to notify state agency of name change and to add husband's surname to signature).*

State statutes which authorize civil actions for change of name also sometimes have provisions which are clearly based on the assumption that a wife's legal surname is the surname of her husband. *See, e.g. Iowa Code Ann. Sec. 674-1 (married women may not bring action to change her name); Iowa Code Ann. Sec. 674-10 (if husband changes his surname, wife's name is also changed); Ky. Rev. Stat. Ann. Sec. 401-010 (married women not allowed to change name); Mich. Comp. Laws Ann. Sec. 711.1 (if husband changes name, wife's name also changes); Minn. Stat. Ann. Sec. 259.10 (if husband changes name, wife's name changes if she joins in the application—statute does not indicate what happens if wife fails to join in application); Vt. Stat. Ann. tit. 5, Sec. 814 (if husband changes name, wife's name also changes).*

Finally, in some state statutes reference is made to "change of legal name" without it being specified whether this includes name changes resulting from marriage. *See, e.g. Mass. Gen. Laws Ann. ch. 30, Sec. 13 (notaries must reregister upon change of name); Neb. Rev. Stat. Sec. 64-114 (notaries changing legal name may continue to use name under which they received commission); N.H. Rev. Stat. Ann. Sec. 261-2 (driver's license holders required to make notification of change of legal name); S.C. Code Ann. Sec. 49-6.1 (notaries to apply for change of name on commission upon legal change of name).* In light of the common law rule, however, such provisions are likely to be held to apply to changes of name by marriage.

It should be noted, in conclusion, that the above listing of state statutes is not exhaustive. Rather, it is meant to suggest the

kinds of state statutes which include provisions based upon the assumption that a woman's legal name changes upon marriage.

XVI. A REASONABLE ALTERNATIVE TO THE ERA

This brings us to the question whether Congress should consider the submission to the States of a Constitutional amendment to deal with the matter, and whether such amendment should permit Congress and the States acting within their respective jurisdictions to make reasonable distinctions between the rights and responsibilities of men and women in appropriate areas of life.

I honestly believe that the equal protection clause, properly interpreted, is sufficient to abolish all unfair legal discriminations made against women by state law.

Despite this belief, I intend to offer an amendment to the ERA which would prevent constitutional chaos. The amendment to the ERA which I plan to offer on the floor of the Senate reads as follows:

"The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses."

Mr. BAYH. Mr. President, will the Senator yield briefly so that we may ask for the yeas and nays on final passage?

Mr. ERVIN. I yield for that purpose.

Mr. BAYH. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. There is a sufficient second. The yeas and nays are ordered.

Mr. ERVIN. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from North Carolina may proceed.

Mr. ERVIN. Mr. President, I believe that the overwhelming majority of the good women who have been advocating—

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. Will the Senate please be in order? Senators who wish to confer with fellow Senators will please retire to the cloakroom. The Senate will be in order.

The Senator may proceed.

Mr. ERVIN. Mr. President, I believe the overwhelming majority of good women who have been advocating and who are still advocating adoption of the equal rights amendment are like a majority of the Members of the Senate and House of Representatives in respect to their knowledge of what this amendment will do.

For this reason I hope that all of us will note this prayer:

Father, forgive us for we know not what we do.

Mr. BYRD of West Virginia. Mr. President, may we have order in the galleries?

The PRESIDING OFFICER. Visitors in the galleries are reminded they are guests of the Senate and that the rules require there be no demonstrations of any type at any time. The Chair respectfully requests that you abide by that rule.

The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I have attempted unsuccessfully to persuade the Senate to adopt various amendments which would make the equal rights amendment more understandable. My motive in so doing has been as lofty as the motive which actuated the conduct of Job Hicks in my county about the turn of the century. At that time they had in my county a good bricklayer, a very skillful bricklayer named John Watts. John Watts took the notion he had been called upon to preach. While he was very proficient in the art of bricklaying, he was somewhat deficient in theology, and that fact was noted by one of his contemporaries, Job Hicks. John Watts had a practice of getting some of the local rural churches to let him use their pulpits on Sunday. On one occasion he was preaching in one of these small rural churches when Job Hicks happened to come by. Job Hicks had had several drinks of Burke County corn liquor, which is alleged to be a very potent beverage.

When Job staggered by this little country church and saw John Watts in the pulpit, exhorting the congregation, Job staggered up the aisle, grabbed John Watts by the coat collar, dragged him to the door of the church, and threw him out upon the ground. Job Hicks was prosecuted in the superior court of my county for disturbing religious worship. He was convicted by a jury and was called to the bar of the court by Judge Robinson for sentencing.

Judge Robinson evidently felt like Job Hicks—that there might be some deficiencies in the theological doctrines being expounded by John Watts at the time of this unseemly event, and so, in seeking somewhat to temper the wind to the shorn lamb in his sentence, Judge Robinson said, in a very stern voice, "Job Hicks, when you were guilty of this unseemly conduct on the Lord's Day, you must have been so intoxicated as to not realize what you were doing." Job Hicks responded and said, "Your Honor, it is true I had had several drinks of corn liquor, but I would not want Your Honor to think that I was so drunk that I could stand by and see the word of the Lord be mumicked up like this without doing something about it."

So I have offered amendments, because I did not wish to see the Constitution of the United States being mumicked up.

I am just as much interested as any Member of this Congress is in seeing to it that unfair and unreasonable and arbitrary discriminations in laws against women are abolished. I am convinced, and my conviction is shared by some of the greatest legal scholars of this country, that all unfair or unreasonable or arbitrary discriminations made by law against women in our country are unconstitutional under the due process clause of the fifth amendment, which is applicable to the Federal Government, and the equal protection clause of the 14th amendment, which is applicable to the States.

I, therefore, believe that it is wholly unnecessary for the Constitution to be

amended to abolish unfair or unreasonable or arbitrary distinctions made against women by the acts of Congress or by the laws of any of the States.

I certainly believe that it is very unwise and very undesirable to adopt the equal rights amendment in its present form, because that amendment is susceptible of the interpretation—and many legal scholars think that is the only interpretation that could be placed upon it—that it converts men and women into identical legal beings and confers upon men and women identical legal rights and subjects men and women to identical legal responsibilities.

I fear this will be the interpretation which the Supreme Court will necessarily have to place upon the equal rights amendment, because the equal rights amendment is absolute and rigid in terms and admits of no exceptions or limitations. It declares, in substance, that neither Congress nor the legislatures of the 50 States can make any legal distinction based upon sex.

Well, the good Lord made some substantial distinctions between men and women when He created them. The Book of Genesis informs us quite truly that when God created mankind He created them male and female. I am of the opinion that Mrs. Myra Wolfgang, a high officer in a union which represents women, stated an indisputable truth when she said the difference between men and women cannot be changed by an act of Congress or by a constitutional amendment.

Now, to be sure, Congress and the States can amend the Constitution and say to all legislative bodies in this Nation that they must pretend that men and women were not created as two sexes, but created as one sex. That will not settle any problems. It will merely magnify the problems and make Congress and the States rather ridiculous in that they would be attempting to repeal the handwork of God.

I am troubled by a constitutional amendment which undertakes to do something which is impossible, and that is to convert men and women into identical legal beings.

I am troubled by this amendment on another ground, and I have been surprised to notice so many Members of the Senate who profess to believe in States' rights and State responsibilities support this amendment. When he wrote his great opinion in Texas against White, Chief Justice Salmon P. Chase stated that the Constitution in all its provisions look to an indestructible Union composed of indestructible States. I fear—and I say this in all seriousness—that if this equal rights amendment is adopted by the States, it will come near to abolishing the States of this Union as viable governmental bodies. I think it will virtually reduce the States of this Union to meaningless zeroes on the Nation's map. I think it will transfer virtually all the legislative power of government from the States to Congress.

I do not know how many Members of the Senate have read the decision of the Supreme Court in the case of Katzenbach against Morgan, which laid down the

strange doctrine that the fifth section of the 14th amendment, which empowers Congress merely to enforce the first section of the 14th amendment, gives Congress the power to nullify State laws and substitute for State laws, even in areas committed by the Constitution to the States, Federal laws.

I invite the attention of the Senate to this proposed amendment in its present form:

SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

If the decision of the Supreme Court in *Katzenbach* against *Morgan* is adhered to by the Supreme Court, section 2 of this equal rights amendment in its present form will empower the Congress of the United States to supplant the States in every field of legislation which relates to men and women or boys and girls; and I respectfully submit that that applies to virtually every field of legislation and to virtually every law.

Why do I say that? I say that because laws are not passed to regulate the conduct of animals or birds or fishes; laws are passed for only one purpose, and that is to govern the conduct of people. And despite the clamor of some of the supporters of the equal rights amendment, there are only two kinds of people in this world, and those two kinds of people are males and females.

So I think that some of us might well get down on our knees and pray, "Father, forgive us, for we know not what we do."

This is the most drastic proposal for amendment of the Constitution ever recommended or supported in the history of this Nation. If it is susceptible of the interpretation which the Supreme Court placed upon the fifth section of the 14th amendment in *Katzenbach* against *Morgan*, then this amendment, if ratified by the States, will give Congress the power to occupy the entire legislation field in this Nation in respect to the manifold union composed of indestructible States, will be bereft of their power in this respect. The States will become to all intents and purposes meaningless zeroes upon the Nation's map.

Not only that, the federal system, which contemplates an indestructible union composed of indestructible States, as it is now established by all of the provisions of the Constitution, will be substantially destroyed, and all legislative power relating to the manifold relations of men and women will be concentrated in the Congress of the United States.

And not only that, but the ultimate power to interpret all of the laws of this nature will be lodged in the Federal courts to the exclusion of the State courts.

I believe, and I honestly believe, that this proposed amendment is susceptible of these drastic interpretations. Indeed, since it has no exceptions and no limitations, and is absolute and rigid in its provisions, I do not see how it can be interpreted otherwise. That is a bad sit-

uation, thus to concentrate all power of this nature in the Federal Government, because nothing truer was ever said than the statement which Woodrow Wilson uttered on one occasion in which he said that when we resist the concentration of governmental power, we resist the processes of death, because concentration of power always precedes the destruction of human liberties.

So much for my fears about the interpretation which will be placed upon the equal rights amendment. I want to take this occasion to thank the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD), the distinguished assistant majority leader, the Senator from West Virginia (Mr. BYRD), and the distinguished floor manager of this measure, the Senator from Indiana (Mr. BAYH), for their great courtesy, their patience, and their forbearance which they have manifested toward me during the days this resolution has been under debate.

I also wish to take this occasion to thank one of my aides, Robert Bland Smith, Jr., for the dedicated, diligent, and untiring assistance which he has given to me in my efforts to present to the Senate views which I feel deeply and which I entertain honestly.

I also wish to pay tribute to the small band—an exceedingly small band—of stouthearted Senators who have shared my views in respect to the equal rights amendment and have supported my efforts to bring some degree of order out of the legal chaos which the amendment is likely to inflict upon our country. It is almost impossible to conceive the state of legal chaos which will ensue if this amendment is ratified by the States. It will invalidate thousands of laws which make legal distinctions between men and women, many of which are based upon entirely rational grounds and a recognition of the fact that God did create two sexes.

These stouthearted Senators who have stood by me in this body sought in vain to make it certain that the equal rights amendment would not compel the Congress to subject women to compulsory military service when there was no necessity for so doing. They sought, and sought in vain, to make it certain that the daughters of America would not be sent into combat to die or to be maimed by the bayonets, the bombs, the bullets, the grenades, the mines, the napalm, the poison gas, and the shells of an enemy.

They tried to make certain that the laws of the United States and the laws of the States which extend protections and exemptions to women in general and to wives, mothers, and widows in particular, which commonsense and reality and the experience of mankind have shown to be needful to enable them to perform their roles as wives and mothers, and to extend to helpless children the nurtures which they require in their infancy, and to give them the training necessary to their intellectual and spiritual role, were not outlawed by this amendment. They sought to do that in vain.

They also sought to make certain that the laws which imposed upon husbands the primary obligation to support their

wives, and upon fathers the primary obligation to support their children, would not be abrogated by this amendment. They also sought to do that in vain.

They also sought to make certain that the laws of the United States and the laws of the States which secure privacy—an invaluable right—to men and women and to boys and girls would not be abrogated by this amendment. They sought to do that in vain.

They also sought to make certain that mature men would not go unwhipped of justice if they seduce innocent and virtuous women under promises of marriage, or if they have carnal knowledge of immature girls under the age of consent, or if they transport women and girls in interstate or foreign commerce for the purpose of debauchery and prostitution. These stouthearted Senators also sought that objective in vain.

The stouthearted Senators, who stood by me in this fight, and I have sustained an overwhelming defeat. But I believe that we have sustained this defeat under circumstances in which defeat serves better than victory to shake the soul and let the glory out. I say to those stouthearted Senators who supported me in this fight that they can lay to their hearts the satisfaction that they have not aided in an effort to crucify American womanhood upon the cross of dubious equality and specious uniformity. They have pursued this course because they cannot blind themselves to the proposition that when God created mankind, he created them male and female.

I cannot vote for this resolution on final passage.

I sincerely hope that the State legislatures will give serious consideration to all the arguments which have been made for the resolution and all the arguments which have been made against the resolution. I hope they will not agree to a constitutional amendment which would compel Congress to send my 5-year-old granddaughter on a subsequent occasion into combat with armed enemies of the United States where there are millions and millions and millions of men available to perform that duty.

I appreciate the indulgence of the Senate, and I yield the floor.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, first, may I extend my congratulations to the distinguished senior Senator from North Carolina for the fight he has waged in all honesty, with deep conviction, and with great vigor.

If this constitutional amendment is adopted in the Senate by a two-thirds vote, it will not be a catastrophic defeat for the distinguished Senator; but if defeat there is, it will be an honorable defeat, because he has stated his case with cogency and clarity, and he has waged the good fight for what he thinks is right, and perhaps history will prove him right. But, as the Senator has indicated, it is going to take three-quarters of the States to affirm or to approve what Congress will have done if this body this afternoon passes the constitutional amendment by

a two-thirds majority, and that remains to be seen.

I want to pay my deepest respects to the distinguished Senator not only for the fight he has waged, consistently and with clarity, but also for the fact that he is the only Member of this body who, since we returned to the second session of this Congress on January 18, has been engaged in debate, day in and day out, without fail. He has been the first Member to come into the Chamber, along with the joint leadership. Almost always, he has been the last Member to leave.

So I commend the distinguished Senator for the remarkable physical stamina he has shown, and I honor him for the intellectual integrity he has displayed.

Mr. ERVIN. Mr. President, I thank the distinguished majority leader for his most generous and gracious remarks. If I had not entertained heretofore the profound admiration for him which I do, I would certainly entertain it now.

Mr. BAYH. Mr. President, I ask unanimous consent that excerpts from the majority report of the Senate Judiciary Committee, explaining in significant detail some of the issues which have been discussed here today be printed in the RECORD, so that the State legislatures of the 50 States may have the benefit of that information.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

[Excerpts from the majority report of the Committee on the Judiciary on the Equal Rights Amendment—submitted by Mr. BAYH]

STATEMENT

The proposed Equal Rights Amendment reads as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE—

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

The history of the proposal, the need for an Equal Rights Amendment, and the effect of the Amendment are discussed in detail in later sections of this Report. The basic principle on which the Amendment rests may be stated shortly: sex should not be a factor in determining the legal rights of men or of women. The Amendment thus recognizes the fundamental dignity and individuality of each human being. The Amendment will affect only governmental action; the private actions and the private relationships of men and women are unaffected. And the Amendment only requires equal treatment of individuals; it does not require any State or the federal government to establish quotas of men or women in, for example, admission to State supported schools.

Both major political parties have repeatedly supported this proposal in their national party platforms. It has received the endorse-

ment of Presidents Eisenhower, Kennedy, Johnson and Nixon. Both the Citizens' Advisory Council on the Status of Women, created by President Kennedy, and the President's Task Force on Women's Rights and Responsibilities, created by President Nixon, have recommended in strongest terms approval of the Amendment. At least eleven states (California, Connecticut, Delaware, Florida, Louisiana, Maryland, Minnesota, Nebraska, New York, North Dakota, Pennsylvania) have taken official action in support of the Amendment. The House of Representatives on October 12, 1971 approved the Amendment 354 to 23. And S.J. Res. 8, which is identical to H.J. Res. 208, is cosponsored by over half the Senate.

Moreover, an impressive list of organizations have recorded their support of the Equal Rights Amendment. Among them are the following:

- American Association of College Deans.
- American Association of University Women.
- American Association of Women Deans and Counselors.
- American Association of Women Ministers.
- American Civil Liberties Union.
- American Federation of Soroptimist Clubs.
- American Home Economics Association.
- American Jewish Congress.
- American Medical Women's Association.
- American Newspaper Guild.
- American Nurses Association.
- American Society of Microbiology.
- American Society of Women Accountants.
- American Society of Women Certified Public Accountants.
- American Women in Radio and Television.
- Association of American Women Dentists.
- B'nai B'rith Women.
- Church Women United.
- Common Cause.
- Council for Christian Social Action, United Church of Christ.
- Council for Women's Rights.
- Ecumenical Task Force on Women and Religion (Catholic Caucus).
- Federally Employed Women.
- General Federation of Women's Clubs.
- Intercollegiate Association of Women Students.
- International Association of Human Rights Agencies.
- International Brotherhood of Painters and Allied Trades.
- International Brotherhood of Teamsters.
- International Union of United Automobile, Aerospace & Agricultural Implement Workers UAW.
- Interstate Association of Commissions on the Status of Women.
- Ladies Auxiliary of Veterans of Foreign Wars.
- League of American Working Women.
- National Association of Colored Women.
- National Association of Negro Business and Professional Women's Clubs.
- National Association of Railway Business Women.
- National Association of Women Lawyers.
- National Coalition of American Nuns.
- National Education Association.
- National Federation of Business and Professional Women's Clubs.
- National Organization for Women.
- National Welfare Rights Organization.
- National Women's Party.
- National Women's Political Caucus.
- Professional Women's Conference.
- St. Joan's Alliance of Catholic Women.
- Unitarian Universalist Women's Federation.
- United Automobile Workers.
- United Methodist Church—Women's Division.
- Women's Equity Action League.
- Women's International League for Peace and Freedom.
- Women's Joint Legislative Committee for Equal Rights.
- Women United.

Finally, a number of distinguished constitutional scholars have testified in support of the Equal Rights Amendment, including Professor Norman Dorsen of New York University, Professor Thomas I. Emerson, Lines Professor of Law at Yale Law School, and Leo Kanowitz, Professor of Law at the University of New Mexico. Moreover, the Association of the Bar of the City of New York, through its Committee on Civil Rights and Special Committee on Sex and Law has urged "adoption of the [Equal Rights] Amendment as the best means of establishing equality before the law." And the American Bar Association recently adopted a resolution which "supports constitutional equality for women, and urges extension of legal rights, privileges and responsibilities to all persons, regardless of sex."

In sum, the Committee was impressed with the broad base of political, public and scholarly opinion in favor of the Equal Rights Amendment, and recommends that it be approved.

I. LEGISLATIVE HISTORY

Proposed constitutional amendment providing for equal rights for men and women have been introduced in nearly every Congress since 1923, shortly after the ratification of the 19th Amendment extended the right to vote to women. Resolutions were reported favorably by the Subcommittee on Constitutional Amendments in the 88th, 89th and 90th Congresses, as well as a number of earlier Congresses. Resolutions were reported favorably by the Committee on the Judiciary in the 80th, 81st, 82nd, 83rd, 84th, 86th, 87th and 88th Congresses.

In the 81st Congress, and again in the 83rd Congress, resolutions passed the Senate with a floor amendment. This floor amendment provided that the Amendment "shall not be construed to impair any rights, benefits or exemptions now or hereafter conferred by law upon members of the female sex." In both instances, the House of Representatives failed to act. The same floor amendment was added to an equal rights resolution during Senate consideration in the 86th Congress. The proponents of the amendment objected to this addition because it diluted the equality of rights and responsibilities among men and women, which is the Amendment's goal. Accordingly, the resolution's principle sponsors moved to recommit it to the Judiciary Committee, and that motion was passed.

On May 5, 6, and 7, 1970, the Subcommittee on Constitutional Amendments held hearings on the Equal Rights Amendment. It received testimony from 42 witnesses, received 75 additional insertions of material, and compiled a hearing record of almost 800 pages. *The Equal Rights Amendment, Hearings Before the Senate Subcommittee on Constitutional Amendments, 91st Cong., 2d Sess. (1970)*. The Subcommittee met and reported the Amendment to the full Committee on August 10, 1970. Soon thereafter the full Committee held a further series of hearings on the Amendment, on September 9, 10, 11, and 15, 1970. It listened to 25 witnesses and compiled a 430 page record of hearings. *Equal Rights 1970, Hearings Before the Senate Committee on the Judiciary, 91st Cong., 2d Sess. (1970)*.

In the meantime, the House of Representatives voted to discharge its Judiciary Committee from further consideration of the Equal Rights Amendment and, on August 10, 1970, by a vote of 350 to 15, approved the Amendment (H.J. Res. 264).

The House-passed joint resolution was not referred to the Senate Judiciary Committee but was placed directly on the Calendar pursuant to the request of the Senate leadership. H.J. Res. 264 became the pending Senate business on October 6, 1970. After several days of debate, on October 13, 1970, the Senate adopted by a vote of 36 yeas to 33 nays Amendment No. 1049, which added a second sentence to the first section of the

joint resolution, as follows: "This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service." Amendment 1049 also imposed a seven-year time limit on the ratification process and made the joint resolution effective two years—instead of one year—after ratification. Thereafter, the Senate also adopted, 50 yeas to 20 nays, Amendment No. 1048, which added to the pending joint resolution a second section proposing an additional constitutional amendment relating to prayers in public buildings. After further debate the Senate laid aside the joint resolution, as amended, on November 19, 1970, and proceeded to the consideration of other business. No further action was taken in the 91st Congress.

In the 92d Congress, Subcommittee No. 4 of the House Judiciary Committee held hearings on H.J. Res. 208—which is identical to S.J. Res. 8 and 9 in the 92d Congress—on March 24, 25, and 31, and April 1, 2, and 5, 1971, hearing testimony from 35 witnesses. *Equal Rights for Men and Women*, Hearings Before Subcommittee No. 4 of the House Judiciary Committee, 92d Cong., 1st Sess. (1971). On April 29, 1971 the Subcommittee by a voice vote ordered the measure reported to the House Judiciary Committee. The full Committee amended the joint resolution on June 22, 1971 by a vote of 19 to 16 by adding a section which provided that the Amendment would "not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or any State which reasonably promotes the health and safety of the people." It then, by vote of 38 to 2, ordered the joint resolution reported favorably. The Committee Report, H.R. Rep. 92-259, was filed on July 14, 1971. Separate views were filed by 14 Representatives; Minority views were filed by 3.

On October 12, 1971 the House rejected by vote of 104 to 254 the Committee amendment to H. J. Res. 208. After further debate, it approved the resolution in its original form by vote of 354 to 23. (117 Cong. Rec. H. 9392 (Daily ed. Oct. 12, 1971)).

In the Senate, the Subcommittee on Constitutional Amendments met on November 22, 1971, and adopted by vote of 6 to 4 a motion to substitute the following language for sections 1 and 2 of S.J. Res. 8, and S.J. Res. 9, and H.J. Res. 208:

"SECTION 1. Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them.

SEC. 2. The Congress shall have the power to enforce the provisions of this article by appropriate legislation."

The subcommittee then voted unanimously to report all three joint resolutions, as amended, to the full Judiciary Committee.

By vote of 15 to 1 on February 29, 1972, the Senate Judiciary Committee ordered S.J. Res. 8, S.J. Res. 9 and H.J. Res. 208 reported favorably to the floor unamended. Prior to ordering the Equal Rights Amendment reported favorably and unamended, the Committee took the following actions:

(1) Rejected by roll call vote of 1 to 15 a motion to substitute for sections 1 and 2 of the Equal Rights Amendment the language (printed above) recommended by the Subcommittee on Constitutional Amendments (see Part IV, *infra*);

(2) Rejected by voice vote a motion to add the following language to section 1 of the Equal Rights Amendment: "The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces;

or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes, rape, seduction, or other sexual offenses," (see Part IV, *infra*);

(3) Rejected by voice vote a motion to add the following language to section 1 of the Equal Rights Amendment: "Nothing contained in this article shall be construed to deprive the United States and the several States of the legislative power to extend to female persons any right or protection sanctioned by the fifth or fourteenth articles of amendment";

(4) Rejected by roll call vote of 2 to 14 a motion to add the following language to section 1 of the Equal Rights Amendment: "This article shall not impair the validity of any law of the United States which exempts women from compulsory military service or service in combat units of the Armed Forces", (see Part III(B), *infra*);

(5) Rejected by roll call vote of 3 to 13 a motion to add the following language to section 1 of the Equal Rights Amendment: "This article shall not impair the validity of any law of the United States which exempts women from compulsory military service," (see Part III(B), *infra*);

(6) Rejected by voice vote a motion to add the following language to section 1 of the Equal Rights Amendment: "No Federal law shall prohibit an institution of higher education from enrolling only male or female students or students of both sexes. If any such institution of higher education enrolls both male and female students, such institution shall not be allowed to accept only a certain percentage of individuals of either sex," (see Part III(E), *infra*).

II. THE NEED FOR THE EQUAL RIGHTS AMENDMENT

A. Discrimination against women

While there has been some progress toward the goal of equal rights and responsibilities for men and women in recent years, there is overwhelming evidence that persistent patterns of sex discrimination permeate our social, cultural and economic life. The magnitude of sex discrimination in the country today can be gauged by the simple and eloquent statement of Congresswoman Shirley Chisholm when she testified before the Subcommittee on Constitutional Amendments in May 1970: "I have been far oftener discriminated against because I am a woman than because I am black."

Some legislative progress has been made toward equal rights, but not enough to wipe out all discrimination against women in State and Federal law. Congress approved Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment unless sex is a "bona fide occupational qualification." And Congress approved the Equal Pay Act which assures that many persons who do equal work receive equal pay regardless of sex. But these laws fail to reach discrimination in many areas, allow for substantial exemptions in some cases, and have often been implemented too slowly.

The Supreme Court has been slow to move too: recently, for the first time, it did invalidate a state law which discriminated against women, but it did so in a way which left the burden of proof on each woman plaintiff to show that the law is unreasonable. The Court has consistently refused to apply the Fourteenth Amendment to discrimination based on sex with the same vigor it applies the Amendment to distinctions based on race.

In the States, progress has been mixed. Some States have made diligent efforts to revise outmoded and discriminatory laws, and three States—Illinois, Pennsylvania and Virginia—have recently approved State constitutional provisions banning sex discrimina-

tion. But in other States, there has been no progress at all.

On the whole, sex discrimination is still much more the rule than the exception. Much of this discrimination is directly attributable to governmental action both in maintaining archaic discriminatory laws and in perpetuating discriminatory practices in employment, education and other areas. The social and economic cost to our society, as well as the individual psychological impact of sex discrimination, are immeasurable. That a majority of our population should be subjected to the indignities and limitations of second class citizenship is a fundamental affront to personal human liberty.

Specific examples of sex discrimination are legion, and have been brought to the attention of Congress many times, through hearings on the Equal Rights Amendment and on other legislation (for example, *Discrimination Against Women*, Hearings Before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st Cong., 2d Sess. (1970)). In assessing the need for the Equal Rights Amendment, it is useful to review a few of the best known and most far reaching cases of invidious sex discrimination.

1. Criminal Liability and Civil Responsibility

Difficult as it is to believe, the record shows that women are sometimes denied even the basic rights and responsibilities of citizenship in the United States today. Until 1966, for example, three States excluded women from juries altogether. And today there is still at least one State which requires women, but not men, to register specially to be eligible to serve on juries.

There is also invidious discrimination against women in the criminal laws of some States. One State has a statute allowing women to be jailed for three years for habitual drunkenness, while a man can receive only 30 days for the same offense. In two States, the defense of "passion killing" is allowed to the wronged husband, but not to the deceived wife. And in another State, female juvenile offenders can be declared "persons in need of supervision" for non-criminal acts until they are 18, while males are covered by the statute only until age 16.

2. Education

Governmental action also contributes significantly to sex discrimination in education. Approximately 75 percent of the college students in the country attend publicly supported institutions. These colleges and universities have a crucial role in determining employment opportunities for women by providing access to professional training and careers. Yet widespread patterns of sex discrimination are found in the admissions policies and hiring practices of institutions of learning throughout the country. As an independent report prepared for the Department of Health, Education and Welfare this year stated: "Discrimination against women, in contrast to that against minorities, is still overt and socially acceptable within the academic community."

Discrimination in admission to college is widespread. In 1968, only 18 per cent of the men entering public four-year colleges had a high school grade average of B+ or better. But 41 per cent of the freshman women had attained such grades. In 1969 one State university published an admissions brochure which stated that "admission of women on the freshman level will be restricted to those who are especially well qualified." Another State university admitted women only for summer school sessions, and never to the regular academic curriculum, unless they are related to employees or students and wish to pursue a course of study otherwise unavailable. In 1970, the percentage of the female population enrolled in college was markedly lower than the percentage of the male population. Over 40 percent of the

males between the ages of 18 and 21, and over 20 percent of the males between 23 and 24 were enrolled in college. But the comparable figures for females were 29 percent and 9 percent respectively.

Discrimination in admission to graduate schools is, if anything, even more widespread, despite the fact that women's undergraduate grade point averages are higher than men's. Testimony before the House Special Subcommittee on Education in 1970 revealed, for example, that the number of women applying for admission to U.S. medical schools increased by more than 300 percent between 1929-30 and 1965-66 (while male applications increased by only 29 percent). The percentage of women applicants who were accepted actually declined during the same period. And while women received 55 percent of the Bachelors degrees awarded in all fields in 1968-69, women received only 37 percent of the Masters degrees, only 13 percent of the Doctorates, and only 4 percent of the professional degrees.

Discrimination against women does not end with admission; it pervades every level of the teaching profession. While 75 percent of the teachers in public elementary and secondary schools are women, only 22 percent of the elementary school principals and only 4 percent of the high school principals are women. At the college level, statistics show that while almost half of the male teachers become full professors only 10 percent of the female teachers are granted that status. And according to a recent survey of 36 prominent law schools, to take a final example, only 2.1 percent of the faculty members are women, and a quarter of those are classified as Librarians.

3. Business and labor

The business and labor laws of some States discriminate invidiously against women. Some States place special restrictions on the right of married women, but not married men, to contract or to establish independent businesses or to become a guarantor or a surety. Perhaps even more astounding, the Committee discovered at the hearings in 1970 that twenty-six States then had laws or regulations which prohibited the employment of adult women in specified occupations or industries which were open to adult men.

Most States have enacted so-called "protective" labor legislation in one form or another. Many of these laws are not protective at all, but rather are restrictive, and have been shown to have a discriminatory impact when applied only to women. For example, a law which limits the working hours of women but not of men makes it more difficult for women to obtain work they desire and for which they are qualified, or to become supervisors. State laws which limit the amount of weight a woman can lift or carry arbitrarily keep all women from certain desirable or high-paying jobs, although many if not most women are fully capable of performing the tasks required. Speaking of such restrictive laws as a whole, the Equal Employment Opportunities Commission states in its guidelines on sex discrimination:

"The Commission believes that [state laws which restrict or limit the employment or conditions of employment of females] although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences and abilities of individual females and tend to discriminate rather than protect."

Partially because of these laws, and also because of other sorts of sex discrimination, working women are at a great disadvantage in the private sector. The median salary income for women is only 59.5 percent of that earned by men—and in recent years the gap

between male and female median incomes has been widening. In 1969, less than 5 percent of all fulltime female workers earned over \$10,000 per year, compared with 35 percent of all male workers. At the other end of the scale, 14.4 percent of women, but only 5.7 percent of men, earned less than \$3,000. Indeed, sex discrimination is so pervasive that women with four years of college education made only slightly more than men with an eighth grade education. And while women account for more than 40 percent of all white collar jobs, they hold only one in ten managerial positions and one in seven professional jobs.

Sex discrimination is clearly present even in government employment, which in total accounts for more than 20 percent of the labor force. For example, although women constituted 34 percent of all full-time white collar Federal Civil Service Employees in 1967, they filled more than 62 percent of the four lowest grades and only 2.5 percent or less of the four highest grades. And sex discrimination in government has an effect even greater than the numbers involved, for private employers often look to government as a model for employment practices.

B. Inadequacy of legislative or judicial relief

It is sometimes argued that all of the discriminatory laws and practices which exist could be eliminated without a constitutional amendment. If the Supreme Court were to hold that discrimination based on sex, like discrimination based on race, is inherently "suspect" and cannot be justified in the absence of a "compelling and overriding state interest", then part of the reason for the Amendment would disappear. But the Court has persistently refused so to hold. Indeed, the Court has upheld many laws which plainly discriminate against women.

Its first significant case involving sex discrimination was *Bradwell v. Illinois*, 83 U.S. 130 (1872), in which the Court upheld the refusal of the Supreme Court of Illinois to allow women to practice law. The Court relied on the Privileges and Immunities Clause of the Fourteenth Amendment and not the Equal Protection or Due Process Clauses, to uphold the law. Two years later, the Court held that the Fourteenth Amendment did not confer on women citizens the right to vote, in *Minor v. Happersett*, 88 U.S. 162 (1874), a position which stood until ratification of the Suffrage Amendment in 1920.

Later, the Court began to apply a standard of "reasonableness" to laws which discriminated on the basis of sex. This test was employed to uphold against constitutional attack labor laws which appeared to have little if any reasonable justification. A good example is the case of *Goesart v. Cleary*, 335 U.S. 464 (1948), in which the Court upheld a Michigan statute prohibiting all females—other than the wives and daughters of male licensees—from being licensed as bartenders. The Court in *Goesart* assumed that such patently discriminatory legislation could be sustained if it were "reasonably" related to the State's objective in making such a classification. The Court did not even explore the possibility that a more rigorous constitutional standard should be applied.

More recently, in *Hoyt v. Florida*, 386 U.S. 57 (1967), the Court upheld a Florida statute providing that no female would be called for jury service unless she had registered to be placed on the jury list. The Court found that such discrimination was permissible under the Fourteenth Amendment, since it was reasonable "for a state, acting in pursuit of the general welfare to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities."

Last year the Supreme Court for the first time struck down a law which discriminated

against women. In *Reed v. Reed*, — U.S. —, 40 U.S.L.W. 4013, (1971), the Court invalidated a State law which arbitrarily favored men over women as administrators of estates. But the Court did not overrule such cases as *Goesart* and *Hoyt*, and it did not hold that sex discrimination is "suspect" under the Fourteenth Amendment. Instead, the Court left the burden on every woman plaintiff to prove that governmental action perpetuating sex discrimination is "unreasonable." And that is a difficult burden to carry, indeed. As the Association of the Bar of the City of New York pointed out in its recent report "[t]he 1971 *Reed* case indicated no substantial change in judicial attitude." Passage of the Equal Rights Amendment will make it clear that the burden is *not* on each woman plaintiff to show sex discrimination is "unreasonable"; the Amendment will, instead, assure all men and women the right to be free from discrimination based on sex.

Of course, it would theoretically be possible for Congress and each State to revise their laws and eliminate those which discriminate against women. But without the impetus of the Equal Rights Amendment, that process would be far too haphazard and much too slow to be acceptable. We cannot afford to wait any longer for Congress and each of the 50 State legislatures to find the time to debate and revise their laws. As in other areas where the Constitution has been amended, there is an imperative for immediate action. The Nation has waited too long already—it has been 49 years since the Equal Rights Amendment was first introduced. Only a constitutional amendment can provide the legal and practical basis for the necessary changes.

Finally, we cannot overlook the immense symbolic importance of the Equal Rights Amendment. The women of our country must have tangible evidence of our commitment to guarantee equal treatment under law. An amendment to the Constitution has great moral and persuasive value. Every citizen recognizes the importance of a constitutional amendment, for the Constitution declares the most basic policies of our Nation as well as the supreme law of the land.

The Committee concludes that because of the pervasive legal sex discrimination which now exists, and because of the inadequacy of legislative and judicial remedies, there is a clear and undeniable need for the Equal Rights Amendment.

III. THE EFFECT OF THE EQUAL RIGHTS AMENDMENT

A. General principles

The general principles on which the Equal Rights Amendment rests are simple and well-understood. Essentially, the Amendment requires that the federal government and all state and local governments treat each person, male and female, as an individual.

It does not require that any level of government establish quotas for men or for women in any of its activities; rather, it simply prohibits discrimination on the basis of a person's sex. The Amendment applies only to governmental action; it does not affect private action or the purely social relationships between men and women.

The Separate Views of Congressman Edwards and 13 other members of the House Judiciary Committee in the House Report on the equal rights amendment, H.R. Rep. 92-359, state concisely and accurately the understanding of the proponents of the Amendment:

"The basic premise of House Joint Resolution 208 in its original form is a simple one. As stated by Professor Thomas Emerson of Yale University, one of the Nation's foremost authorities on constitutional law, the original text is based on the fundamental proposition that sex should not be a factor in determining the legal rights of women or of men."

"The existence of a characteristic found

more often in one sex than the other does not justify legal treatment of all members of that sex different from all members of the other sex. The same is true of the functions performed by individuals. The circumstance, that in our present society members of one sex are more likely to be engaged in a particular type of activity than members of the other sex, does not authorize the Government to fix legal rights or obligations on the basis of membership in one sex. The law may operate by grouping individuals in terms of existing characteristics or functions, but not through a vast over-classification by sex.

"The main reason underlying the basic concept of the original text derives from both theoretical and practical considerations. The equal rights amendment (H.J. Res. 208) embodies a moral value judgment that a legal right or obligation should not depend upon sex but upon other factors—factors which are common to both sexes. This judgment is rooted in the basic concern of society with the individual, and with the right of each individual to develop his own potentiality.

"The legal principle underlying the equal rights amendment (H.J. Res. 208) is that the law must deal with the individual attributes of the particular person and not with stereotypes of over-classification based on sex. However, the original resolution does not require that women must be treated in all respects the same as men. "Equality" does not mean "sameness." As a result, the original resolution would not prohibit reasonable classifications based on characteristics that are unique to one sex. For example a law providing for payment of the medical costs of child bearing could only apply to women. In contrast, if a particular characteristic is found among members of both sexes, then under the proposed amendment it is not the sex factor but the individual factor which should be determinative.

"Just as the principle of equality does not mean that the sexes must be regarded as identical, so too it does not prohibit the States from requiring a reasonable separation of persons of different sexes under some circumstances. In this regard, two collateral legal principles are especially significant. One principle involves the traditional power of the State to regulate cohabitation and sexual activity by unmarried persons. This principle would permit the State to require segregation of the sexes for these regulatory purposes with respect to such facilities as sleeping quarters at coeducational colleges, prison dormitories, and military barracks.

"Another collateral legal principle flows from the constitutional right of privacy established by the Supreme Court in *Griswold v. Connecticut*, 381 U.S. 479 (1965). This right would likewise permit a separation of the sexes with respect to such places as public toilets, as well as sleeping quarters of public institutions.

"With respect to other constitutional considerations, it should be noted that (H.J. Res. 208) would apply only to governmental action, and not to private or individual action. In this regard, as well as in some of its other features, (H.J. Res. 208) is similar to those provisions of the 14th Amendment which are directed against racial, ethnic, and religious discrimination. Thus, in interpreting (H.J. Res. 208) the courts would have available a substantial body of case law which could be used as a guide when relevant. At the same time much as the struggle of women for equality is comparable to that of racial, ethnic, and religious minorities, there are some differences which the courts could also take into account in appropriate cases."

Because substantial controversy has arisen over the impact of the Equal Rights Amendment in a few specific areas, it is appropriate to suggest the likely application of these general principles in such areas.

B. Military service

It seems clear that the Equal Rights Amendment will require that women be allowed to volunteer for military service on the same basis as men; that is, women who are physically and otherwise qualified under neutral standards could not be prohibited from joining the service solely on the basis of their sex. This result is highly desirable for today women are often arbitrarily barred from military service and from the benefits which flow from it; for example, educational benefits of the G.I. bill; medical care in the service and through Veterans Hospitals; job preferences in government and out; and the training, maturity and leadership provided by service in the military itself.

It seems likely as well that the ERA will require Congress to treat men and women equally with respect to the draft. This means that, if there is a draft at all, both men and women who meet the physical and other requirements, and who are not exempt or deferred by law, will be subject to conscription. Once in the service, women, like men, would be assigned to various duties by their commanders, depending on their qualifications and the service's needs.

Of course, the ERA will not require that all women serve in the military any more than all men are now required to serve. Those women who are physically or mentally unqualified, or who are conscientious objectors, or who are exempt because of their responsibilities (e.g., certain public officials; or those with dependents) will not have to serve, just as men who are unqualified or exempt do not serve today. Thus the fear that mothers will be conscripted from their children into military service if the Equal Rights Amendment is ratified is totally and completely unfounded. Congress will retain ample power to create legitimate sex-neutral exemptions from compulsory service. For example, Congress might well decide to exempt all parents of children under 18 from the draft.

Our understanding of the effect of the Equal Rights Amendment comports with that of the House. The members of the House Judiciary Committee, quoting from the Report of the Senate Judiciary Committee on the Equal Rights Amendment in 1964, said:

"It could be expected that women will be equally subject to military conscription and they have demonstrated that they can perform admirably in many capacities in the Armed Forces. But the government would not require that women serve where they are not fitted just as men [are not required to serve where not fitted]."

Or, as Congresswoman Martha Griffiths, the primary sponsor of H.J. Res. 208, said on the floor:

"The draft is equal. That is the thing that is equal. But once you are in the Army you are put where the Army tells you where you are going to go."

Congressman Edwards, who had chaired the House Subcommittee Hearings on the Equal Rights Amendment, put it this way:

"Women in the military could be assigned to serve wherever their skills or talents were applicable and needed, in the discretion of the command, as men are at present."

Furthermore, our understanding comports with that of the witnesses at the hearings and other interested parties. See, for example, the testimony of Professor Norman Dorsen of New York University Law School in *Equal Rights for Men and Women 1971*, Hearing Before Subcommittee No. 4 of the House Judiciary Committee, 92d Cong., 1st Sess. 162-164 (1971); Report of the President's Task Force on Women's Rights and Responsibilities, *A Matter of Simple Justice* (April, 1970) (the Equal Rights Amendment "would impose on women an obligation for military service"); National Association of Women Lawyers, Letter to Hon. Emanuel Celler (April 27, 1971) (females "would be . . . subject to

the draft on the same basis as young men" and "women in the military would receive the same benefits and veterans' preferences, employment, education skills learned in the service").

One question often raised is whether men and women can serve together efficiently in the Armed Services. Perhaps the best answer is that they are doing so now without apparent difficulty. The experience of other countries supports this conclusion. In Israel, women are required to serve in the Defense Forces just as men. They are not, however, assigned to combat posts, nor are they required to engage in physical combat. Rather, they perform critical noncombatant tasks in the clerical, communication, electronics and nursing fields. Separate and independent facilities are maintained for women soldiers. Under these circumstances, no significant difficulties have arisen from having men and women serve together.

C. Labor legislation

A number of States have laws which restrict or limit the occupations or conditions of employment of females, but not of males. These laws are often called "protective", but in practice many of them discriminate against women by making it difficult and sometimes impossible for a fully qualified woman to obtain certain jobs, often highly desirable ones. Because of Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment in certain instances where sex is not a "bona fide occupational qualification", these laws are not nearly as great a barrier to fair employment for women as they once were. Nevertheless, some States retain their laws.

Most of the so-called "protective" laws were passed to protect women from exploitation in another era, and they represented hard won progress. But today, some are merely restrictive, and because they apply only to women confer no real benefit. For example, some States have laws which absolutely prohibit women, whether qualified or not, from certain jobs—jobs which are open to men. Other States have weight lifting laws applicable only to women which effectively deny fully qualified women certain jobs. Still others have laws limiting the hours women may work—and these sometimes prevent women from gaining promotions to supervisory positions. As the Equal Employment Opportunity Commission has found, such laws "do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect."

Ratification of the Equal Rights Amendment will result in equal treatment for men and women with respect to the labor laws of the States, as in other legal matters. This will mean that such restrictive discriminatory labor laws as those which bar women entirely from certain occupations will be invalid. But those laws which confer a real benefit, which offer real protection, will, it is expected, be extended to protect both men and women. Examples of laws which may be expanded include laws providing for rest periods or minimum wage benefits or health and safety protections. Men are now sometimes denied the very real benefits these laws offer. As Professor Leo Kanowitz pointed out to your Committee at its Hearings in September 1970: "The fears of some opponents of the [Equal Rights] Amendment that its adoption would nullify laws that presently protect women only are thus unfounded—since the equality of treatment required by the [A]mendment can be achieved by extending the benefits of those laws to men rather than by removing them for women." The Association of the Bar of the City of New York pointed out in discussing laws requiring rest periods for women only, that they "may be extended to both sexes without burden or disruption."

D. Expansion versus nullification of unconstitutional statutes

The question of whether laws found unconstitutional under the Equal Rights Amendment will be struck down or extended to cover both men and women, is a question which extends beyond the area of labor legislation. Of course, the legislatures of the several States will have the primary responsibility for revising those laws which conflict with the Equal Rights Amendment. Indeed, the purpose of delaying the effective date of the Equal Rights Amendment for two years after ratification is to allow legislatures—particularly those which meet only in alternate years—and agencies an opportunity to review and revise their laws and regulations. As stated above, the Committee expects that any labor law, or other legislation, which is truly protective will be extended to include both sexes, while laws which are restrictive will become null and void.

In those situations where a court finds a State or federal law in conflict with the Equal Rights Amendment, the legal infirmity will be cured either by expanding the law to include both sexes or nullifying it entirely. As discussed above, it is expected that those laws which are discriminatory and restrictive will be stricken entirely as the court did in *McCrimmon v. Daley*, 2 FEP Cases 971 (N.D. Ill. March 31, 1970) which involved a law banning women from a certain occupation. On the other hand, it is expected that those laws which provide a meaningful protection would be expanded to include both men and women, as for example minimum wage laws, see *Potlatch Forests, Inc. v. Hays*, 318 F. Supp. 1368 (E.D. Ark. 1970), or laws requiring rest periods, cf. Equal Employment Opportunities Commission Case No. 6-8-6654 (June 23, 1969), 1 CCH Employ. Prac. Guide 6021.

There can be no question that the courts, upon holding a statute unconstitutional, can expand the scope of the statute if necessary to cure its legal infirmity. As Mr. Justice Harlan said, concurring in *Welsh v. United States*, 398 U.S. 333, 361 (1970) (footnote omitted):

"Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion." See *Skinner v. Oklahoma ex rel. Williams*, 316 U.S. 535, 543 (1942); *Iowa Des-Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931); *Developments in the Law—Equal Protection* 82 Harv. L. Rev. 1065, 1136-37 (1969).

The Supreme Court has applied this principle in many cases. In 1880, for example, the Court extended a State statute limiting jury service to "electors" to include blacks enfranchised by the 14th and 15th Amendments rather than striking the law down. *Neal v. Delaware*, 103 U.S. 370 (1880). In *Sweat v. Painter*, 339 U.S. 637 (1950), and *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950) the Court held that State laws restricting access to State institutions of higher education on the basis of race were unconstitutional; it expanded the laws so that black students had equal access. And in *Levy v. Louisiana*, 391 U.S. 68 (1968), the Court extended to illegitimate children the right, restricted by a State statute to legitimate children, to recover wrongful death benefits. See generally Dorsen, *The Necessity of a Constitutional Amendment in Equal Rights for Women: A Symposium on the Proposed Constitutional Amendment*, 6 Harv. Civ. Rts.—Civ. Lib. L. Rev. 216 (1971).

As previously stated, courts have had a great deal of experience in dealing with laws which discriminate on the basis of sex, for Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the

basis of sex unless sex is a "bona fide occupational qualification". Under that Federal statute a State overtime wage law was extended to include men, *Potlatch Forests, Inc. v. Hays*, 318 Supp. 1368 (E.D. Ark. 1970) as were weightlifting limitations, *Bowe v. Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969). On the other hand, State laws banning women from an occupation have been struck down, *McCrimmon v. Daley*, 2 FEP Cases 971 (N.D. Ill. March 31, 1970), on remand from 418 F. 2d 366 (7th Cir. 1969). See generally *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Har. L. Rev. 1109, 1188-1190, 1194-1195 (1971).

E. Criminal law, education and family law

The general principles discussed above will govern the application of the Equal Rights Amendment to all fields of law. With respect to criminal law, for example, the Amendment will prohibit a State from providing for different punishments for men and women who commit the same crime, cf. *Commonwealth v. Daniel*, 430 Pa. 642, 243, 243A. 2d 400 (1968). But the Amendment will not invalidate laws which punish rape, for such laws are designed to protect women in a way that they are uniformly distinct from men.

With respect to education, the Equal Rights Amendment will require that State supported schools at all levels eliminate laws or regulations or official practices which exclude women or limit their numbers. The Amendment would not require quotas for men and women, nor would it require that schools accurately reflect the sex distribution in the population; rather admission would turn on the basis of ability or other relevant characteristics, and not on the basis of sex. A similar result may be expected with respect to the distribution of scholarship funds. State schools and colleges currently limited to one sex would have to allow both sexes to attend. Employment and promotion in public schools would, as in the case of other governmental action, have to be free from sex discrimination.

It should also be noted with respect to education that the Amendment would not require that dormitories or bathrooms be shared by men and women. As explained above, the Amendment does not prohibit the separation of the sexes where the right of privacy is involved. As the Association of the Bar of the City of New York pointed out in its report, "[t]he constitutional right of privacy could be used to sanction separate male and female facilities for activities which involve disrobing, sleeping and personal bodily functions."

The Equal Rights Amendment may also have an effect on those State laws affecting domestic relations. In this area, as elsewhere, the Amendment will prohibit discrimination based on sex. This will mean that State domestic relations laws will have to be based on individual circumstances and needs, and not on sexual stereotypes. The report of the Association of the Bar of the City of New York accurately describes the Amendment's effect in this area:

"The Amendment would bar a state from imposing a greater liability on one spouse than on the other merely because of sex. It is clear that the Amendment would not require both a husband and wife to contribute identical amounts of money to a marriage. The support obligation of each spouse would be defined in functional terms based, for example, on each spouse's earning power, current resources and nonmonetary contributions to the family welfare.

"Thus, if spouses have equal resources and earning capacities, each would be equally liable for the support of the other—or in practical effect, neither would be required to support the other. On the other hand where one spouse is the primary wage earner and the other runs the home, the wage earner would have a duty to support the spouse who stays

at home in compensation for the performance of her or his duties.

"Although courts still probably would be reluctant to interfere in the allocation of support between husband and wife in an ongoing marriage, upon the dissolution of marriage, both husbands and wives would be entitled to fairer treatment on the basis of individual circumstances rather than sex. Thus alimony laws could be drafted to take into consideration the spouse who had been out of the labor market for a period of years in order to make a non-compensated contribution to the family in the form of domestic tasks and/or child care."

As Professor Norman Dorsen pointed out to the Committee:

"The National Conference of Commissioners on Uniform State Laws recently adopted a Uniform Marriage and Divorce Act which takes an approach similar to that contemplated by the Equal Rights Amendment. It provides for alimony or maintenance for either spouse, and child support by either or both spouses, by defining all duties neutrally in terms of functions and needs of the people involved, rather than in terms of their sex. The action by the Commissioners, a respected and prudent body, deserves special consideration."

In sum, there is no reason to fear that the Equal Rights Amendment will have undesirable effects on the rights of men and women under State domestic relations laws.

V. SECTIONAL ANALYSIS

Resolution: This is the traditional form of a joint resolution proposing a constitutional amendment for ratification by the States. The seven year time limitation assures that ratification reflects the contemporaneous views of the people. It has been included in every amendment added to the Constitution in the last 50 years. It is interesting to note that the longest period of time ever taken to ratify a proposed amendment was less than 4 years. The power and responsibility of Congress to impose a reasonable time limit for ratification of constitutional amendments was made clear in both *Dillon v. Gloss* 256 U.S. 368 (1921), and *Coleman v. Miller*, 307 U.S. 433 (1939).

Section 1: This is the operative portion of the Amendment, described in detail above.

Section 2: This section grants Congress the power to implement the provisions of the Amendment by legislation. The wording is taken from Section 5 of the 14th Amendment, and almost identical language is found in the 13th, 15th, 19th, 23d, 24th, and 26th Amendments.

Section 3: This section delays the effective date of the Amendment for two years after ratification. The purpose of this section is to give the States and the federal government an opportunity to review and revise their laws, regulations and practices so as to bring them into compliance with the Amendment. Those State legislatures which meet only in alternate years, of course, will need this length of time to have an adequate opportunity to review their laws.

Mr. BAYH. Mr. President, I also ask unanimous consent to have printed in the RECORD a list of those organizations which have been particularly helpful to the Senate and to the Judiciary Committee in its deliberations. I only wish I had the time to name all the individuals, both staff members of these organizations and others who have worked on their own, whose countless hours of work have been of incalculable value to those of us in Congress who have been involved in this effort. I am also indebted to my staff for all the efforts they have made to make possible the adoption of this important amendment by the Senate.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

American Association of College Deans.
American Association of University Women.
American Association of Women Deans and Counselors.
American Association of Women Ministers.
American Civil Liberties Union.
American Federation of Soroptimist Clubs.
American Home Economics Association.
American Jewish Congress.
American Medical Women's Association.
American Newspaper Guild.
American Nurses Association.
American Society of Microbiology.
American Society of Women Accountants.
American Society of Women Certified Public Accountants.
American Women in Radio and Television.
Association of American Women Dentists.
B'nai B'rith Women.
Church Women United.
Common Cause.
Council for Christian Social Action, United Church of Christ.
Council for Women's Rights.
Ecumenical Task Force on Women and Religion (Catholic Caucus).
Federally Employed Women.
General Federation of Women's Clubs.
Intercollegiate Association of Women Students.
International Association of Human Rights Agencies.
International Brotherhood of Painters and Allied Trades.
International Brotherhood of Teamsters.
International Union of United Automobile, Aerospace & Agricultural Implement Workers UAW.
Interstate Association of Commissions on the Status of Women.
Ladies Auxiliary of Veterans of Foreign Wars.
League of American Working Women.
National Association of Colored Women.
National Association of Negro Business and Professional Women's Clubs.
National Association of Railway Business Women.
National Association of Women Lawyers.
National Coalition of American Nuns.
National Education Association.
National Federation of Business and Professional Women's Clubs.
National Organization for Women.
National Welfare Rights Organization.
National Woman's Party.
National Women's Political Caucus.
Professional Women's Conference.
St. Joan's Alliance of Catholic Women.
Unitarian Universalist Women's Federation.
United Automobile Workers.
United Methodist Church—Women's Division.
Women's Christian Temperance Union.
Women's Equity Action League.
Women's International League for Peace and Freedom.
Women's Joint Legislative Committee for Equal Rights.
Women United.

Mr. BAYH. Mr. President. I also wish to bring to the attention of my colleagues an article by Marguerite Rawalt, an attorney at law, concerning the necessity of the equal rights amendment. Mrs. Rawalt is a past president of the National Association of Women Lawyers and is the general counsel of Women United. She has worked long and hard to secure passage of the equal rights amendment and in this article she describes persuasively the reasons that the Senate must join the House and give congressional approval to the equal rights amendment.

I ask unanimous consent that an article entitled "Women Are Constitutional Outcasts" from "The Woman Physician," official publication of the American Medical Women's Association, vol. 26, December 1971, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WOMEN ARE CONSTITUTIONAL OUTCASTS

(By Marguerite Rawalt)

(ABSTRACT.—*The legal status of women is reviewed, and shows that women do not have the same legal rights and privileges as men. The passage of an Equal Rights Amendment is therefore a necessity.*)

The hidden truth about the U.S. Constitution is that it applies to men only. The founding fathers who drafted this document to govern the new democracy based it upon the English common law under which women and slaves were mere chattels. After 187 years of application and interpretation, women alone are still outside its pale, with the single exception of the right to vote granted by a specific amendment, in 1920. Only by further amendment can American women be brought into the rarified atmosphere of constitutional protection, since both the judicial and legislative branches have failed to recognize women as full beneficiaries of the law. Accordingly, the "Equal Rights Amendment" has been introduced in every Congress for the past 48 years and reads as follows:

"Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

WHY IS AN EQUAL RIGHTS AMENDMENT NEEDED?

The U.S. Supreme Court is the final interpreter of the Constitution. It has never ruled that the female half of the population is entitled to the benefits readily accorded to all males, either citizens or aliens. Since the original Constitution did not include females, cases claiming constitutional protection have arisen under the Fifth and Sixth Amendments thereto. The Fifth Amendment, applicable to the Federal Government, declares that no person may "be deprived of life, liberty or property without due process of law." The 14th Amendment adopted in 1868, forbids any state to "deprive any person of life, liberty or property without due process of law; or to deny to any person the equal protection of the laws."

The "equal protection" clause has been often and variously applied by the U.S. Supreme Court to insure legal rights of male citizens and of male non-citizens; to alien Chinese laundrymen and Japanese fishermen; to corporations; to racial groups; to school children; to juveniles; and to arch criminals. It seems irrefutable to say that the Court has embraced everybody and everything within the ambit of the 14th Amendment except only women of America. There follows an analysis of the high Court's controlling rulings.

1. The right to work is not a woman's right under the 14th Amendment.

The Supreme Court refused to apply the 14th Amendment to insure women the right to follow the profession of law. It has never been held to give women the right to work at any lawful occupation of the individual's choice. Illinois and Virginia statutes denying admission of women to the practice of law were early upheld by decisions in 1872 and in 1894.¹ The rationale was that:

"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life . . . at common law a woman had no legal existence separate from her husband . . . and many rules of law de-

pendent upon this cardinal principle still exist in full force in most states, one that a married woman is incapable, without her husband's consent, of making contracts" and "That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth."

State legislatures later voluntarily opened the legal profession to all.

On the other hand, the Court has never failed to uphold the right to work for the men of this country. When Yick Wo, one of many Chinese laundrymen in San Francisco appealed from denial of a license, the Supreme Court in 1886 found "no reason whatever . . . why they should not be permitted to carry on their harmless and useful occupation on which they depend for a livelihood."²

In 1948, the Court granted certiorari "to review this question of importance" being the constitutionality of a California law prohibiting the licensing of "alien Japanese" interned during the war. Said the Court, ruling in his favor:

"The 14th Amendment and laws under its authority embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."³

Yet women have been excluded as persons and citizens under the 14th Amendment. In fact, as women view the matter today, with 31½ million women in the work force, not only are they excluded from equal protection, but the words of the Constitution have been turned into limitations, conditions exclusions, weight-lifting limitations to bar them from promotions to supervisory jobs, to deny them opportunity to earn premium pay for overtime, and even to cause the employer to lower the percentage of women hired in his work force. This reserves the better jobs for male workers.

When the Supreme Court was faced with the contention in 1908 that the Oregon law restricting women from working more than ten hours per day was a denial of their right to work, a denial of equal protection, the Court's rationale for refusing to uphold the same hours for all workers, men or women, was that "Sex is a valid basis for classification."⁴ It ruled that women, as a class, could be denied equal protection; that there was no discrimination or differentiation as between all women, by placing them in a "reasonable" category. The Court refused to follow its own decision given just three years earlier striking down a New York statute that limited hours for men and women. The Court declared:⁵

"She is properly placed in a class by herself and legislation designed for her protection may be sustained when like legislation is not necessary for men and could not be sustained."

In *Lochner v. New York* we held that a law that no laborer may work in a bakery over 60 hours a week was not as to men a legitimate exercise of the policy power of the state, but an unreasonable and unnecessary and arbitrary inference with the right and liberty of the individual . . . as such void under the Federal Constitution."

In 1948, the Court upheld a Michigan statute denying a license to work as bartender to any female "unless she be wife or daughter of the male owner."⁶ Women, as a class, could be thus denied the better paying job behind the bar, although they were free to serve in lower paid waitress jobs on the public side of the bar—was this equal protection? However, the New Jersey State Supreme Court in 1970 overruled such a state law "in light of current customs and mores."

TITLE VII OF THE CIVIL RIGHTS ACTS OF 1964

A first breakthrough in restrictive labor laws came with enactment of Title VII of

Footnotes at end of article.

the Civil Rights Act of 1964, which makes it unlawful for an employer, employment agency, or labor organization to discriminate in employment on account of race, religion, national origin, or sex. An exception was written into the law for a "bona fide occupational qualification" (BFOQ) to cover such instances as guards in prisons, religion of employees in a religious institution, and the like. The first cases to reach the courts were brought by women in trade unions, to challenge the state restrictive labor laws imposing maximum hours of work, weight-lifting, separate seniority lists, and job descriptions which served to relegate women to the lower paying levels. The cases were decided against the women plaintiffs in the trial courts whereupon women attorneys, and newly formed civil rights for women organizations, came to the side of the litigants and carried their cases up to higher courts on appeal. In the two cases which have become final, the U.S. Court of Appeals reversed the trial courts and ruled in favor of the women, ordering that they receive back pay and the jobs which they had been refused. *Weeks v Southern Bell Tel. & Tel. Co.* (March 4, 1969)⁶ decided by the U.S. Court of Appeals, Fifth Circuit, sitting in New Orleans, ruled against the employer's weight-lifting condition on the job in question, and set down the rule that the employer "had the burden of proving that all, or substantially all, women would be unable to perform safely and efficiently the duties of the job involved." In *Bowe v Colgate-Palmolive Co.* (Sept. 26, 1969)⁷ the U.S. Court of Appeals, Seventh Circuit, sitting in Chicago, ruled that if weightlifting conditions were to be applied, they must be applied to each individual, male or female; outlawed separate seniority lists for male and female employees; and struck down union contracts fixing job categories which gerrymandered women into the lowest paying job levels.

Two lower Court decisions have overruled state laws fixing maximum hours for women only, not by application of the 14th Amendment, but on the ground that such laws violate Title VII, which, as a Federal law, takes precedence over state law under the Supremacy Clause of Article VI of the Constitution.⁸ However, the Supreme Court refused to review a decision by the California Federal Court in which the female plaintiff challenged the *Muller v Oregon* ruling on maximum hours laws.⁹ And thus the 1908 "sex is a valid basis for classification" doctrine still stands not only as to labor laws, but throughout other areas of law which single women out for different treatment.

Maternity leave regulations imposing arbitrary periods of absence for pregnancy, have produced two irreconcilable federal court decisions under the 14th Amendment.¹⁰ A District Court sitting in Virginia ruled that a school board regulation requiring teachers to take leave of absence from duty at the end of the fifth month of pregnancy, was a violation of the equal protection clause. It ruled that the school board was an arm of the State so that its regulations constituted state action. However, a District Court, sitting in Ohio, about the same date, refused to find any constitutional denial in such a provision, quoting *Muller v Oregon* and its whole progeny of cases ruling that "sex was a reasonable classification."

The one and only employment rights case to reach the Supreme Court since 1964 did not present a 14th Amendment issue, simply the question whether the fact that the employee was a mother of pre-school children amounted to "BFOQ" exception under Title VII to warrant the company's refusal to hire her. *Ida Phillips v Martin Marietta Corporation* (Jan. 25, 1971).¹¹ The Court remanded the case to the trial court with an "indica-

tion that a BFOQ exception could be established by a showing that some women, even the vast majority, with pre-school age children have family responsibilities that interfere with job performance and that men do not usually have such responsibilities." Justice Thurgood Marshall said, however, "I fear that in this case . . . the Court has fallen into the trap of assuming that the act permits ancient canards about the proper role of women to be a basis for discrimination. Congress, however, sought just the opposite result."

Meanwhile, a number of states have voluntarily applied the provisions of Title VII and the regulations thereunder which hold that such state laws imposing conditions upon women only, are superseded by the Federal law, and are no longer enforceable. Thus, without Supreme Court retraction, these laws are being dropped through a piecemeal, state by state, process. However, the all-pervasive principle that "sex is a reasonable classification" marches on and has put its tentacles into other fields of law to deny equality of rights to women.

2. *The 14th Amendment does not insure fair and equitable property rights to married women.*

In every state in the Union, one or another kind of legal disability or restriction limits the property rights of married women, as reported by the President's Commission on the Status of Women (1963). The 1944 opinion of the Florida Supreme Court aptly summarizes the situation:

" . . . a woman's responsibilities and faculties remain intact from age of maturity until she finds her mate; whereupon, incompetency seizes her and she needs protection in an extreme degree. Upon the advent of widowhood she is reinvested with all her capabilities which had been dormant during her marriage, only to lose them again upon remarriage. Intermittently, she is protected and benefited according as she is married or single."

Under common law principles which undergird the statutes in 42 states, each spouse owns whatever property he or she earns. Where the husband is the sole income producer, all the property acquired during marriage is therefore his property. While state laws have variously modified the common law principle, some limitation remains in every jurisdiction. In the eight community property states, husband and wife each owns an outright one-half of the property acquired during marriage, even though the wife has no outside earnings. But in most jurisdictions the husband, and not the wife, has the management rights, enabling him to create debts and dissipate the property without knowledge or consent of his wife. Texas notably revised its community property laws in 1968 to equalize management and ownership. Florida changed its Constitution to recognize a property right for married women.

A tremendous step toward equalizing property rights was taken in the model and proposed Uniform Marriage and Divorce Act promulgated in August 1970, and given endorsement by the American Bar Association. It is hoped that the states will adopt such a uniform act, thus clearing the maze of divorce grounds, and of provisions governing division of property upon dissolution of marriage. The Act would provide that upon dissolution of marriage, the marital property be divided by the Court without regard to marital misconduct, after considering such relevant factors as the economic circumstances of each spouse and the contribution of each to the acquisition of the property, including an evaluation of the contribution of a spouse as homemaker. Alimony, as such, is discarded in favor of court-assessed "maintenance payments" which may be assessed against either husband or wife, based upon reasonable needs, and the ability to support himself or herself by employment. The Court

may order either or both parents to pay reasonable amounts for support of a child, and retains control over enforcement of the payment. Previous defenses of condonation, connivance, collusion, recrimination, in divorce actions would be abolished. The grounds for divorce, to be decided upon by the court after considering many outlined relevant factors, are that "the marriage is irretrievably broken" and that children are provided for. This proposed uniform act embraces "equality of rights under the law." The Equal Rights Amendment would undergird and hasten its adoption by all the states.

3. *The 14th Amendment does not guarantee the right to female students to attend any public college of their choice.*

In 1938 the Supreme Court held that the Missouri State University could not refuse to admit a person to study on the ground of his race, and ordered it to admit Mr. Gaines to its law school because he was otherwise denied equal protection of the laws.¹² Yet, 20 years later, the same court refused to review a ruling by the State Court of Civil Appeals of Texas which upheld the denial of the right to enroll in that state's university by a female student, on the ground of her sex. This was in face of the undisputed fact that she could not major in the course in floriculture in any other school of the state. The state court relied upon the doctrine that "sex is a reasonable classification" and refused to follow the Gaines decision precedent because the "question of race was different."¹³ Two lower court decisions in 1970 raise an interesting conflict. The U.S. District Court in Virginia ruled that the exclusion of women from the state university violated the 14th Amendment's equal protection clause. The U.S. District Court in South Carolina refused to find such a violation in the case of male students seeking admission to the state supported female-only college, this latter case citing with satisfaction the whole line of leading cases stemming from *Muller v. Oregon*—"sex was a reasonable classification."¹⁴

But while the wheels of justice grind slowly in the courts, women have brought before federal administrative agencies, charges of sex discrimination against universities and colleges challenging quotas for student admissions, discrimination in scholarships and financial assistance, and in the hiring and promotion of women faculty members.¹⁵

4. Not until 1968 was the 14th Amendment applied to eliminate longer prison sentences for women than for men committing the same crime.

In 1968, two courts invalidated state laws which imposed longer prison sentences upon women than upon men for the same crime, and did so by rejecting the doctrine that "sex is a valid classification."¹⁶ This shocking difference in treatment of the sexes was said to stem from legislative convictions that it required longer to rehabilitate a female than a male criminal. The U.S. District Court in Connecticut concluded that "nothing in the different nature of men and women noted by the Supreme Court in the *Muller*, *Goesart* and *Hoyt* cases suggests any reasonable or just relation between the misdemeanors involved here and the inequality in potential punishments. . . ." The Supreme Court of Pennsylvania similarly was "convinced that considerations of factors which would justify a difference between men and women in matters of employment, as well as in a number of other matters, do not govern or justify the imposition of a longer or greater sentence of women than is imposed upon men for the commission of the same crime." And, is there such difference in the nature of men and women as to uphold a statute which excuses as justifiable homicide a husband's killing of his wife's paramour, but leaves a wife chargeable with murder for the killing of her husband's partner in adultery?"¹⁷

Footnotes at end of article.

5. The denial of constitutional coverage for women because it is lawful to treat them as a class apart (an outcast class!) extends into other areas of law, for example such as conditions upon right to serve on juries, married women's compulsory domicile as that of her husband, and right to serve as estate fiduciaries. A case is now waiting decision in the Supreme Court, testing an Idaho statute that "males shall be preferred to females" as administrators of an estate.¹³

CONGRESS AND THE EQUAL RIGHTS AMENDMENT

The Equal Rights Amendment which would make women of America citizens and persons under the Constitution, has been introduced in every Congress since 1923. All that Congress is asked to do is to submit the proposed Amendment to the states for their ratification. At least 11 states have already taken official action memorializing the Congress to do so.

Year after year, the resolution proposing the Equal Rights Amendment was stymied in the House Judiciary Committee, until in 1970, the unusual procedure of a discharge petition ordered the measure removed from Committee and gave opportunity to the 435 members to vote on the measure. A woman member of Congress, Martha Griffiths, introduced the petition. The resounding vote in favor of the Amendment was 350 to 15, on August 10, 1970. The House-passed Resolution was later killed in the Senate by crippling amendments.

Through the years, the Senate has voted on the proposed Amendment at least four times, only after shamefully nullifying its meaning and scope with a rider of exceptions for all state laws.

Powerful opposition persists from the AFL-CIO unions. However, the also powerful UAW has officially supported the Amendment.

The Amendment was introduced in the 92nd Congress in January 1971, by Hon. Martha Griffiths, persistent champion of the measure. The House Judiciary Committee broke precedent by promptly holding hearings in March, but the full Committee by a majority of one vote, added a nullifying "Wiggins Amendment." At this writing, in such devitalized form, the measure is scheduled for floor debate following the end of the Congressional recess on September 8, '71.

CONCLUSION

Women of the United States are not now persons and citizens under the Constitution as presently worded and interpreted, because controlling decisions of the U.S. Supreme Court establish and adhere to this exclusion.

Women should be full participants in this democracy, without exclusion by reason of sex.

Therefore, women and enlightened men must fight on until the Constitution embraces the principle that "equality of rights under the law . . . shall not be denied or abridged on account of sex."

FOOTNOTES

¹ Bradwell v. Illinois (1872) 83 U.S. 130; In re Belva Lockwood (1894) 154 U.S. 116.

² Yick Wo v. Hopkins, 118 U.S. 356 (1886).

³ Takahashi v. Fish & Game Commission 334 U.S. 410 (1918).

⁴ Muller v. Oregon, 208 U.S. 412 (1908). Sixty years later, in *Mengelkoch v. Industrial Welfare Comm.*, 284 F. Supp. 950 (C.D. Calif.) the court commented: "It was in *Muller v. Oregon* that Louis Brandeis submitted his famed brief containing medical and socio-economic data to establish the reasonableness of the state classification by sex", a brief used in many later types of litigation . . . Mr. Felix Frankfurter represented the State in a later case of *Bunting v. Oregon*, thus solidifying the doctrine of excluding women from 14th Amendment equal protection."

⁵ *Goesart v. Cleary* 335 U.S. 464 (1948) (Michigan law) *Paterson Tavern & Grill Owners Assn. v. Hawthorne*, 270 A. 2nd 628 (N.J. Sup. Ct. 1970).

⁶ *Weeks v. Southern Bell Tel. & Tel. Co.* 408 F. 2d 228 (CA-5, March 4, 1969) reversing 277 F. Supp. 117 (S.D. Ga. 1968).

⁷ *Bowe et al v. Colgate-Palmolive Co.* 416 F. 2d 711 (CA-7, 1969) reversing 272 F. Supp. 332 (S.D. Indiana, 1967).

⁸ *Leah Rosenfeld v. Southern Pacific Co.* 293 F. Supp. 1219 (C.D. Calif. 1968) *Caterpillar Tractor Co. and Illinois Bell Tel. & Tel. Co. v. Grabiec*, 317 F. Supp. 1304 (S.D. Ill. 1970).

⁹ *Mengelkoch v. Industrial Welfare Comm.* 284 F. Supp. 950 (C.D. Calif. 1968) review denied, case, remanded, 393 U.S. 83 (1968).

¹⁰ *Cohen v. Chesterfield County School Board*, 326 F. Supp. 1159 (E.D. Va. 1971) *La Fleur et al v. Cleveland Board of Education*, 326 F. Supp. 1208 (N.D. Ohio. 1971).

¹¹ *Ida Phillips v. Martin Marietta Corp.* (Jan. 25, 1971) remanding 411 F. 2d 1 (CA-5, 1969) and 416 F. 2d 1257.

¹² *Missouri ex rel Gaines v. Canada* 305 U.S. 337 (1938).

¹³ *Allred v. Heaton* 336 S.W. 2d 251 (Tex. Civ. App. 1960) cert den 364 U.S. 517.

¹⁴ *Kirsten v. Rectors & Visitors of U. of Virginia*, 309 F. Supp. 184 (E.D. Va. 1969) *Williams v. McNair*, 316 F. Supp. 134 (D.C. S. Car. 1970).

¹⁵ The Woman's Equity Action League (WEAL), Cleveland, Ohio, organized in 1967, has filed complaints in Office of Federal Contract Compliance of Dept. of Labor, and to Secretary, Health, Education and Welfare, pursuant to Ex. Order 11375, forbidding sex discrimination by government contractors.

¹⁶ *U.S. ex rel Carrie Robinson v. Janet York*, Supt. 281 F. Supp. 8 (D.C. Conn. 1968) *Commonwealth v. Jane M. Daniel et al* 430 Pa. 642, 243 A. 2d 400 (Sup. Ct. Pa. 1968).

¹⁷ Texas Penal Code, Art 1220 and annotated cases.

¹⁸ *Reed v. Reed* 465 P. 2d 635 (Idaho Sup. Ct. 1970) cert gto. Oct. Term. 1970 No. 430.

Mr. BAYH. Mr. President, I join in the remarks just made by the distinguished majority leader relative to the part the distinguished Senator from North Carolina (Mr. ERVIN) has played in this debate. As I said earlier, I cannot think of a more tenacious, dedicated, sincere, and worthy adversary than he. It has been the good fortune of the Senator from Indiana on occasion to find a strong ally in the Senator from North Carolina. Indeed, he can be a strong ally. I remember well my first experience in amending the Constitution. It was a great moment when the Senator from North Carolina came through the door of the rear of this Chamber at 11:30, after having driven all night from North Carolina, to be in this Chamber to support the position the Senator from Indiana had taken at that time, on the issue of presidential disability and vice presidential succession. It is fair to say that without the significant support of the Senator from North Carolina, the 25th amendment to the Constitution would not now be the law of the land.

As he was a most comforting ally then, he is a most worthy adversary now. The difference of opinion the Senator from Indiana has had with him has in no way diminished my feeling that he has not been sincere. He has been totally sincere. He is a tremendous debater.

I do not think it is necessary to say more. I just feel that perhaps I might touch on one or two points in which the Senator from Indiana differs with his friend from North Carolina. There is the question of the need for a constitutional amendment at all. The Senator from Indiana, as chairman of the Con-

stitutional Amendments Subcommittee, asked himself that question some time ago. I wish a constitutional amendment were not necessary.

As the Senator from Indiana reads the Constitution, women should be considered as fully equal persons under the 14th amendment. Women have never been accorded full equality under the 14th amendment of the Constitution.

The view expressed by my friend from North Carolina that passage of this amendment will destroy the States and take away all their power would cause me some concern, if I agreed with the distinguished Senator. I am sure that each Member of this body is capable of making his own judgment on that particular issue. But, I am of the opinion that if the States of this Union survived back in the 1800's when Congress by constitutional amendment said it was unlawful to discriminate against a black citizen of the United States, certainly now, over 100 years later, the States of this Union will be able to survive a constitutional amendment that declares, "Thou shalt not discriminate against citizens of the United States on the basis of sex."

I shall not repeat the differences I have had with my friend from North Carolina in the area of the draft and combat, the obligation of fathers to support their children, the impact that this amendment would have on sex crimes, or the impact that this amendment would have on mothers, wives, and widows, because that has all been debated fully on the floor. Each Senator has had the chance to listen, to express himself, and to vote accordingly.

The Senator from North Carolina suggested that the supporters of this amendment feel it is possible to create identical human beings, through a constitutional amendment. That is impossible in the judgment of the Senator from Indiana. There is no way we can create two identical males or two identical females; nor can we create a man and woman with the same identity.

The distinguished Senator from North Carolina went further to say that what we were trying to create were identical legal rights. I agree 100 percent with my good friend from North Carolina on that point. I suggest that the Senate would be well advised to make that judgment.

But identical human beings? Impossible. Identical legal rights, based on the God-given talents and skills that one human being possesses? Indeed, that is the very thing we are trying to protect and to insure.

Mr. President, it is my firm conviction that our action today in removing the last legal barriers to full participation in American life by the women of this country is in the finest tradition of our constitutional heritage. It is the heritage of a Nation whose prime objective has been the continuous struggle for an open and equal society—an open and equal society for all, black, brown, red, white—and, hopefully, at long last, men and women.

Mr. COOK. Mr. President, I wish to commend the distinguished Senator from North Carolina for his debate, although we have disagreed from the outset.

Mr. President, 4 years from now, this Nation will be 200 years old. For those women in this Nation that sought the right to vote many years ago, the New York Times, and many Senators on the floor of the Senate, stated that this country would indeed be ruined by woman suffrage. They said, "Back to the kitchen." They said it was unthought of and unheard of, that it was unconscionable, for anyone to consider that the women in this Nation should have the right to vote. The consistency of the editorials published in the New York Times during those days was unbelievable. They almost succeeded, because it took 72 years from the start of the crusade, at the Seneca Falls Convention in 1848, for women to gain the right to vote, in the 19th amendment in 1920.

Congress has now been on this matter for 49 years, since 1923. Forty-nine years to give to a body of individuals freedom under a Constitution in the freest form of government in the world today. Forty-nine years to say in fact that in this Nation of ours all "men" are, indeed, created equal—using the word "men" in its widest, broadest, and its all-inclusive form.

It came as a rather startling revelation to me when the distinguished Senator from North Carolina said that, indeed, he thought that if this equal rights amendment should pass, all of the States would lose their legislative power.

It never dawned upon me that the 50 States of this Union now maintain their separateness by reason of the fact that they could discriminate and legislate against women. I did not know that. It came rather as a shock and surprise to me.

I can only say that I am sorry, that this is a cause whose time has come because this is a cause that should have always been.

I wish to sincerely thank Miss Barbara Schuhmann from my office who has worked on this now ever since she came here. She has been the most tenacious individual on this matter that a Senator could ever have as a part of his staff. She came here from Louisville, where she left school; finished college here and is now in law school. I think I can truly say that her contribution to me in this matter has been absolutely remarkable.

Mr. President, at this time I would like to explain the time factors involved with the equal rights amendment for my Senate colleagues.

After the Senate passage of the unchanged amendment, it will be submitted to the States. Three-fourths, or 38 of the State legislatures must agree to this amendment within 7 years of our vote. Even after that is accomplished, we must wait another 2 years before the amendment becomes effective, unless the courts take heed of our mandate prior to that time.

It would be fitting for me to point out here that if the Senate changes the wording of the amendment as passed by the House of Representatives, the amendment will be killed for this year. Any change at this point would send the amendment to a Senate-House conference where it would die. The criticism

day before yesterday by some Members of the Senate that the proponents are unreasonable in insisting upon the exact House language, therefore, is not justified. The proponents know as well as the critics that any change whatsoever in the wording of the amendment means failure. The proponents are not being unreasonable in insisting upon the exact language of the House: We are only being realistic.

What I am saying is this: Even Senate passage of the original wording does not assure that this amendment will become effective; and even if three-fourths of the States agree to this amendment this year, the State and Federal governments will have 2 years in which to change their laws which discriminate on account of sex.

Mr. President, I agreed to these time limitations 2 years ago only as a compromise to those who were concerned that the amendment would bring such sweeping changes in the law that a flood of litigation would follow its effective date. These compromise measures, although realistically speaking are unnecessary, further point out the ease with which this amendment can take effect. In addition, these compromise measures prove that the proponents are not being unreasonably intolerant of change in the wording of the proposal. We simply realize that in a constitutional amendment, we must have a declaration for future generations that we will not tolerate discrimination on account of sex to be part of our laws. We will not accept less. We will not tolerate any change at this point in the wording of the amendment because any change now means defeat.

It is conceivable that the amendment would not take effect for another 9 years after Senate passage. However, I doubt that this will be the case. I believe that the time has come when everyone realizes that our laws unjustly and unreasonably discriminate on account of sex. I believe that everyone has come to realize that the discrimination is so imbedded in our laws that a constitutional amendment is needed to assure every person in this country the equal protection and due process of law. I believe that everyone realizes that the equalization of our laws should have occurred when the Constitution was written. I believe that the Senate realizes that it must vote for an unchanged equal rights amendment.

We are not considering a piece of legislation that can be changed next year or the year after that. We are considering a constitutional amendment that will remain the law until changed by another amendment or until this country no longer exists. In view of the magnitude and importance of the measure before the Senate, I submit that the proponents are only being realistic when we state that we will not tolerate any change in the wording. Any change will defeat the measure. And any change will not assure the equalization of our laws that is long overdue and so vitally necessary.

Mr. President, my distinguished colleague from North Carolina has quoted the late dean of the Harvard Law School, Roscoe Pound. Dean Pound said in regard to the equal rights amendment:

With respect to the proposed constitutional amendment I feel very strongly that it is a mistake to pile up specific prohibitions in addition to the general guarantees of the Bill of Rights. The guaranty of due process in the Fifth and Fourteenth Amendments secures against arbitrary and unreasonable legislation of every sort, whether on the part of Congress or of State Legislatures. With this protection against arbitrary and unreasonable legislation it certainly ought not to be necessary to add specific prohibitions. If the things aimed at are arbitrary and unreasonable there is already protection against them; if they are reasonable they ought not to be inhibited.

At this time I certainly do not want to list, once again, the numerous cases in which the courts have failed to include women within the framework of the equal protection clause. However, it does require some response.

More specifically, I refer to an extremely interesting law review article by Prof. John D. Johnston, Jr. and Prof. Charles L. Knapp of New York University Law School. The authors have analyzed a wide variety of sex discrimination cases in the State and Federal courts dealing with the following subjects:

- A. Professional and occupational restrictions;
- B. Labor regulation;
- C. Places of accommodation;
- D. Jury qualifications;
- E. Public education;
- F. Criminal sentencing, and;
- G. Consortium.

From an examination of these cases the authors made the following conclusions:

- (1) Despite the enactment of various laws designed to improve the position of women, male-dominated legislatures and courts have historically exhibited the belief that women generally are—and ought to be—confined to the social roles of homemaker, wife and mother, and gainfully employed (if at all) only in endeavors which comport with their assumed subservient, child-oriented and decorative characteristics;
- (2) A small but significant number of courts has recently perceived that some legislation mandating sex discrimination presents substantial constitutional questions, and several such laws have been struck down on equal protection grounds;
- (3) Despite such holdings by a number of state and lower federal courts, opinions continue to appear in which both the result and the reasoning are virtually indistinguishable from those issued nearly a century ago. *In the absence of a definite shift of position on the part of the Supreme Court, and in the face of continued adherence by many state and federal courts to traditional sexist attitudes, it is far too soon to assert that a clear trend toward judicial recognition of women's rights has developed.* (Emphasis added)

I urge my colleagues to read this article and then to explain to me why a constitutional amendment in the form of House Joint Resolution 208, specifically prohibiting sex discrimination is not needed. A constitutional amendment was needed to give women the right to vote; another constitutional amendment is needed to specifically and forever prohibit arbitrary and unreasonable discrimination based upon sex. With all due respect to the late and great legal scholar, Dean Pound, the fifth and 14th amendments have not given women the

intended "due process" and "equal protection" under the law.

As Professors Johnston and Knapp have stated:

Sexism—the making of unjustified (or at least unsupported) assumptions about individual capacities, interest, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.

Mr. President, I have a lengthy law review article from the New York University Law Review which I ask unanimous consent to have printed in the RECORD at this time, so that it will be available for those who peruse it in the future to make up their minds on this rather remarkable step we are taking today. This step is not one that will put everything in this country in chaos but it is a constitutional amendment that will be submitted to the States so that we might accomplish, after 4 years short of 200 years, equality for every individual in this Nation, regardless of whether they may be male or regardless of whether they may be female.

There being no objection, the law review article was ordered to be printed in the RECORD, as follows:

SEX DISCRIMINATION BY LAW: A STUDY IN JUDICIAL PERSPECTIVE

(By John D. Johnston, Jr. and Charles L. Knapp*)

(NOTE.—In this article, the authors analyze a wide variety of cases in which the courts have dealt with sex discrimination by law and conclude that the performance of American judges in this area has generally ranged from "poor to abominable." Arguing that many of the considerations which have led to the invalidation of racially discriminatory laws are equally present when legislative classifications are based on sex, they suggest that the general failure of the courts to perceive this point may be due to certain deeply ingrained attitudes that judges share with a majority of American males. The authors therefore conclude by proposing several countermeasures which judges may employ to overcome any male bias and bring a more objective outlook to the resolution of sex discrimination issues.)

I. INTRODUCTION

Women's liberation is: a slogan—a challenge—a movement—a threat—a cliché—an enigma—or something else, depending on who you are. It is not surprising that "women's lib" connotes different things to different people; their perceptions of it reflect differing social and cultural backgrounds and varying levels of sensitivity to the disadvantages inflicted on some members of society solely for being female. It follows that any contribution (pro or con) to the growing body of "women's lib" literature is likely to be disparaged by some readers as the product of an uninformed mind or a distorted sense of values. It can thus be easily dismissed, on the ground of fatal bias—intentional, subconscious, or naive—by anyone who has strong opposing feelings on the subject.

Though mindful of these pitfalls, we nevertheless tender our own analysis of judicial attitudes toward the relationship between the sexes, gleaned from opinions in cases involving sex-based discrimination. We do not claim to be particularly, much less uniquely, qualified to comment on such matters. Each of us is a middle-aged, white male—some might characterize us as fairly typical WASPs, of the subspecies "law professor." Neither of us has ever been radicalized, brutalized, politicized or otherwise leaned on by the Establishment in any of

the ways that in recent years have led many to adopt heretical views of various kinds.

Each of us, however, was led last year—one through bar association activity,¹ the other in response to questions from female students about the property rights of women—to begin to investigate the ways in which American judges have responded to various types of sex discrimination.² Our research has been of the most traditional kind: finding, analyzing, attacking and defending judicial opinions. We believe that our selection of cases is representative, though admittedly far from exhaustive.

Our conclusion, independently reached, but completely shared, is that by and large the performance of American judges in the area of sex discrimination can be succinctly described as ranging from poor to abominable. With some notable exceptions, they have failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues. Particularly striking, we believe, is the contrast between judicial attitudes toward sex and race discrimination. Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist"—at least their opinions in that area exhibit a conscious attempt to free themselves from habits of stereotypical thought with regard to discrimination based on color. With respect to sex discrimination, however, the story is different. "Sexism"—the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.

We will attempt to demonstrate this thesis through a sampling of what American judges have said in opinions in sex discrimination cases over the past hundred years. Some opinions contain assertions that are, by any rational analysis, overt declarations of "male supremacy." In others, more or less objective rationales for sex discrimination are advanced. The relatively few (and for the most part quite recent) decisions invalidating sex discrimination will also receive consideration, substantively and as possible precursors of a changing judicial attitude.

We make no particular claim for the originality of any of the ideas expressed in the discussion that follows. Indeed, it seems to us that most of them have probably been expressed already by others, although sometimes in a different form or context.³ We have, however, attempted to compile, from judicial opinions in several major areas of sex discrimination by law, those arguments and statements that most clearly reveal the attitudes shaping judicial decisions. We will avoid protracted discussion of particular questions of constitutional doctrine, such as the precise interpretation and application of the due process and equal protection clauses; we also prefer not to join the increasingly heated debate over the desirability of a new "Equal Rights" amendment.⁴ We have avoided emphasizing these issues in part because of our lack of constitutional expertise, but also because we are convinced that preoccupation with legal doctrine has left largely unexplored the surprising extent to which the survival of sex discrimination can be attributed to pervasive judicial attitudes.

We have investigated a number of areas in which the states discriminate by law on the basis of sex. Taken individually, some may appear of less than overwhelming importance; in the aggregate, however, they encompass a broad spectrum of activity, affecting women in several significant aspects of their relationship to society.⁵

Footnotes at end of article.

II. SEX DISCRIMINATION BY LAW

A. Professional and occupational restrictions

1. Practice of Law

One of the earliest Supreme Court decisions upholding sex discrimination by state action was *Bradwell v. Illinois*.⁶ In that case the Illinois Supreme Court had denied a woman's application for a license to practice law solely because she was a female. Although the state statute delegating to the court authority over bar admissions made no specific provision for the exclusion of females, the state court found this to have been the legislative intent and denied the application. It assumed that at the time the statute was enacted the legislators held certain fixed ideas about the roles of the sexes: "That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws was regarded as an almost axiomatic truth."⁷

The petitioner appealed this ruling to the Supreme Court on constitutional grounds. There was no opposing counsel, but none was needed since only Chief Justice Chase dissented from the decision affirming the denial of the application.

The opinion of the court was mainly addressed to the petitioner's claim that the state court's action violated the privileges and immunities clause of the fourteenth amendment. This claim was rejected on the ground that the petitioner, having become a citizen of Illinois, could no longer claim the protection of that clause. The court further indicated that, in any event, admission to law practice was not one of the privileges or immunities of a citizen of the United States.

The opinion did not expressly refer to equal protection. This may be attributable to the fact that, in the *Slaughterhouse Cases*,⁸ decision handed down just prior to *Bradwell*, the Court had expressly limited the scope of fourteenth amendment equal protection to cases involving racial discrimination.⁹

The most interesting feature of the case, however, is the concurring opinion of Mr. Justice Bradley, in which two of his brethren joined. As an affirmation of God's grand design for the sexes, we believe it is unexcelled in legal literature. The significant passages are the following:

"The claim that, under the fourteenth amendment of the Constitution, which declares that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, the statute law of Illinois, or the common law prevailing in that State, can no longer be set up as a barrier against the right of females to pursue any lawful employment for a livelihood (the practice of law included), assumes that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation, or employment in civil life.

"It certainly cannot be affirmed, as an historical fact, that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment

in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state; and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from dependent upon this cardinal principle still exist in full force in most States. One of these is, that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counsellor.

"It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.

"The humane movements of modern society, which have for their object the multiplication of avenues for woman's advancement, and of occupations adapted to her condition and sex, have my heartiest concurrence. But I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position, including those which require highly special qualifications and demanding special responsibilities. In the nature of things it is not every citizen of every age, sex and condition that is qualified for every calling and position. It is the prerogative of the legislator to prescribe regulations founded on nature, reason, and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence. This fairly belongs to the police power of the State; and, in my opinion, in view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex."¹⁰

Unfortunately, the reader is not favored with any indication of the manner by which this "divine ordinance" was transmitted by the Creator to Mr. Justice Bradley.

Twenty-one years after *Bradwell*, the Supreme Court affirmed another state's denial of a woman's application for admission to law practice. In *re Lockwood*,¹¹ the petitioner had already been admitted to the bars of the Supreme Court and the District of Columbia (and allegedly of several other states as well). A Virginia statute provided that any "person" who had been previously admitted to practice in any state or in the District of Columbia could also practice in Virginia's courts. The Supreme Court of Appeals of Virginia simply construed "person" to mean "male" and denied the petition. The primary issue for the Supreme Court was the state court's interpretation of the statute. In a short opinion for a unanimous Court, Chief Justice Fuller refused to issue a writ of mandamus ordering petitioner's admission to practice. As in *Bradwell*, there was no mention of equal protection; and, of course, *Bradwell* had already foreclosed the privileges and immunities argument.

The Supreme Court has not decided any other cases involving exclusion of women from the practice of law. It is quite clear by

now, of course, that the equal protection clause does apply to state regulation of bar admissions and that a denial of admission on grounds having no "rational connection with the applicant's fitness or capacity to practice law" is invalid.¹² By the time these principles became clearly recognized, however, total exclusion of women from law practice was no longer an active problem. Thus, *Bradwell* and *Lockwood* remain the only Supreme Court decisions on the subject.

It is inconceivable, were the issue to arise, that any court today would conclude that there is a rational basis for the total exclusion of women from law practice. In this area, God's grand design has thus been overtaken by the demonstrated fact that women are not, as a class, inherently unfit to practice law.¹³ As we shall see, however, the attitudes revealed by Justice Bradley have been widely shared by American judges and have decisively influenced their response whenever the validity of sex discrimination has been called into question.

2. Sale of liquor

The states undoubtedly possess broad powers over the sale of intoxicating beverages.¹⁴ State regulation has frequently included restrictions on the issuance of bartending licenses to women unless they are closely related to the male owner of a licensed establishment. A Michigan statute prohibiting the issuance of a bartending license to a female, unless the wife or daughter of an owner, was challenged on equal protection grounds in *Goesaert v. Cleary*.¹⁵

The principal defect complained of, however, was not the general exclusion of women from bartending but the exception made in favor of wives and daughters of owners. Appellant's contention was that this exception had no national basis. The statute was nevertheless upheld by the court, voting six-to-three. Writing for the court, Mr. Justice Frankfurter declared:

"Michigan could, beyond question, forbid all women from working behind a bar. This is so despite the vast changes in the social and legal position of women. The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly in such matters as the regulation of the liquor traffic. See the Twenty-First Amendment and *Carter v. Virginia*, 321 U.S. 131. The Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards."¹⁶

The majority obviously did not perceive any serious equal protection problems arising from a complete exclusion of women from bartending.¹⁷ But what is the rational basis for exclusion, in terms of fitness or capacity to be a bartender? The opinion contains only a vague reference to "moral and social problems" against which the state is permitted to protect itself. Nothing else.

Having concluded that total exclusion would be upheld, the majority then considered the validity of Michigan's exception:

"Since bartending by women may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures, the legislature need not go to the full length of prohibition if it believes that as to a defined group of females other factors are operating which either eliminate or reduce the moral and social problems otherwise calling for prohibition. Michigan evidently believes that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight. This Court is certainly not in a position to gainsay such belief by the Michigan legislature. If it is entertainable, as we think it is, Michigan has

not violated its duty to afford equal protection of its laws. We cannot cross-examine either actually or argumentatively the mind of Michigan legislators nor question their motives. Since the line they have drawn is not without a basis in reason, we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling."¹⁸

The three dissenters did not comment upon the majority's assertion that total exclusion of women from bartending would be valid. Instead, they dissented only because the exception operated in favor of female relatives of a male owner, but did not extend to daughters of a female owner—or, for that matter to a female owner herself. This fact convinced them that the legislature was not actually motivated by "solicitude for the moral and physical well-being" of would-be female bartenders. Furthermore, they concluded that such solicitude would be the "only conceivable justification" for this type of discrimination. The opinion of the Court did not respond to the dissenters' argument.

Perhaps the most striking feature of the case, though, is the fact that in 1948 no member of the Court openly challenged the assertion that, in the interest of protecting itself against unspecified "social problems," a state could exclude all women from the occupation of bartending. The opinion displays only token adherence to the requirement that, in order for a legislative classification to be valid, there must be a rational connection between the classification and some proper legislative goal. Since this is usually the minimum requirement for upholding a state statute against an equal protection challenge, the Court clearly did not consider the statute to be class legislation in the area of protected civil liberties, to be sustained only if a compelling state interest in the classification is shown.¹⁹

Prior to *Goesaert*, a number of state courts had sustained similar statutes, brushing aside constitutional challenges with expressions of deference to legislative judgment in matters of "public morality."²⁰ A rare exception was the unanimous decision by the Supreme Court of Florida²¹ invalidating a statute which prohibited women from serving "liquor by the drink over any bar or counter." The short opinion is couched mainly in substantive due process terms, ignoring the array of contrary decisions in other states.

In cases decided after *Goesaert*, state courts have tended to rely heavily on that opinion in sustaining statutes against constitutional challenge.²² At least two state courts, however, have repudiated the reasoning of *Goesaert* and similar cases.

In *Paterson Tavern & Grill Owners Association, Inc. v. Borough of Hawthorne*,²³ the Supreme Court of New Jersey invalidated a local ordinance which excluded women from bartending. Noting that *Goesaert* had been the subject of critical academic comment, the court concluded that its precedential value was highly questionable. Having so concluded, however, the court nevertheless declined to invalidate the ordinance on equal protection grounds. Rather, it declared that the ordinance exceeded the borough's delegated police power, "in the light of current customs and mores,"²⁴ and the court thereby limited its holding to the specific regulation presented.²⁵ Thus, it appears that the New Jersey court will now seriously test any sex-based discriminatory legislation to determine whether it has any rational basis; indeed, it might eventually be persuaded to employ an equal protection rationale in such cases.

In invalidating a California statute prohibiting female bartenders,²⁶ however, that state's supreme court refused to confine itself to such a limited rationale. Its unanimous decision in *Sail'er Inn, Inc. v. Kirby*²⁷ is the most far-reaching state court decision on the

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subject of sex discrimination, and seems destined for landmark status.

In *Sailor Inn*, several bar owners who were employing female bartenders sought a writ of mandamus to prevent the state's alcoholic beverage control authority from revoking their liquor licenses in consequence of their violation of the statute. The court might have held that the statute had been implicitly repealed by a 1970 amendment to the California Fair Employment Practices Act expressly barring sex discrimination.²⁸ This would not have been a novel holding²⁹ and by itself would have furnished a sufficient ground for granting the requested relief. The court chose, however, to address itself to questions of greater import.

Initially, the court considered petitioners' contention that the state statute had been superseded, as a matter of federal supremacy, by Title VII of the 1964 Civil Rights Act.³⁰ Title VII prohibits any employer under its coverage³¹ from discriminating on the basis of sex except where a "bona fide occupational qualification" is concerned. In harmony with a growing body of authority,³² the court held that the state law was superseded by Title VII as to those petitioners whose employers were subject thereto, the state having failed to advance sufficient facts to justify excluding females from the occupation of bartending.

Furthermore, the court could have rested its decision solely upon a provision of the California constitution which prohibits the disqualification of any person, on account of sex, "from entering or pursuing a lawful business, vocation, or profession."³³ An early precedent had construed the provision as follows:

"As we understand the section, it does establish, as the permanent and settled rule and policy of this State, that there shall be no legislation either directly or indirectly incapacitating or disabling a woman from entering on or pursuing any business, vocation, or profession permitted by law to be entered on and pursued by those sometimes designated as the stronger sex. . . . [T]here are no exceptions in this section, and neither we nor any other power in the State have the right or authority to insert any, whether on the ground of immorality or any other ground. All these are considerations of policy, the determination of which belonged to the convention framing and the people adopting the Constitution; and their final and conclusive judgment has been expressed and entered in the clear and unmistakable language of the Constitution itself. . . ."

The *Sailor Inn* opinion accepted this view: "[A]lthough an inability to perform the tasks required by a particular occupation, sex-linked or not, may be a justification for discrimination against job applicants, under section 18, mere prejudice, however ancient, common or socially acceptable, is not."³⁴

Three arguments were presented to the *Sailor Inn* court in support of the proposition that women are in some respects less able to perform the duties of a bartender. First, it was contended that women are incapable of preserving order and protecting patrons of a bar. The court answered:

"This argument ignores modern day reality. Today most bars, unlike the saloons of the Old West, are relatively quiet, orderly and respectable places patronized by both men and women. Even if they were not, many bars employ bouncers whose sole job is to keep order in the establishment. Furthermore, the experience in the states which permit women to tend bar indicates that the dire moral and social problems predicted by the Attorney General do not arise."³⁵

Second, the statute was said to be a measure for protecting women against injury at

the hands of inebriated customers. The court replied:

"The desire to protect women from the general hazards inherent in many occupations cannot be a valid ground for excluding them from those occupations under section 18. Women must be permitted to take their chances along with men when they are otherwise qualified and capable of meeting the requirements of their employment. . . . We can no more justify denial of the means of earning a livelihood on such a basis than we could deny all women drivers' licenses to protect them from the risk of injury by drunk drivers. Such tender and chivalrous concern for the well-being of the female half of the adult population cannot be translated into legal restrictions on employment opportunities for women."³⁷

Finally, it was argued that the statute tends to prevent "improprieties and immoral acts." The court responded:

Section 18 in no way prevents the Legislature from dealing effectively with the evils and dangers inherent in selling and serving alcoholic beverages; it merely precludes resort to legislation against women rather than against the particular evil sought to be curbed.³⁸

Concluding that the statute was in conflict with the constitutional provision, the court declared it void.

This construction of the state constitutional provision relating to sex discrimination in business and employment furnished ample basis for granting the relief sought by the petitioners in *Sailor Inn*; it was therefore unnecessary for the court even to consider the application of the equal protection clauses of the California and United States constitutions.³⁹ Nevertheless, the court did reach this question—and its discussion of equal protection is clearly the most significant part of the opinion.

The court properly recognized that the initial issue was which equal protection test to apply. Conceding that the Supreme Court had never expressly so held, the court nevertheless concluded that "fundamental interests" were affected and that the "strict scrutiny" test was therefore appropriate. The court perceived two reasons for applying this high standard to the statute; it infringed upon the "fundamental right to pursue a lawful profession," and it involved a sex classification, which "should be treated as suspect."⁴⁰ The court's discussion of the latter point is particularly apt and persuasive. After noting several cases in which the Supreme Court had applied this test to such classifications as race and national origin,⁴¹ the court then drew this analogy to sex classification:

"Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from nonsuspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classification is that the characteristic frequently bears no relation to ability to perform or contribute to society. . . . The result is that the whole class is relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members. . . . Where the relation between characteristic and evil to be prevented is so tenuous, courts must look closely at classifications based on that characteristic lest outdated social stereotypes result in invidious laws or practices."

"Another characteristic which underlies all classifications is the stigma of inferiority and second class citizenship associated with them. . . . Women, like Negroes, aliens, and the poor have historically labored under severe legal and social disabilities. Like black citizens, they were, for many years, denied the right to vote and, until recently, the right to serve on juries in many states. They are excluded from or discriminated against in employment and educational opportuni-

ties. Married women in particular have been treated as inferior persons in numerous laws relating to property and independent business ownership and the right to make contracts.

"Laws which disable women from full participation in the political, business and economic arenas are often characterized as 'protective' and beneficial. Those same laws applied to racial or ethnic minorities would readily be recognized as invidious and impermissible. The pedestal upon which women have been placed has all too often, upon closer inspection, been revealed as a cage. We conclude that the sexual classifications are properly treated as suspect, particularly when those classifications are made with respect to a fundamental interest such as employment."⁴²

The court then considered the state interests allegedly served by the statute. The state had argued that female bartenders might commit "improprieties" and that they would be an "unwholesome influence" on bar patrons. The first contention was rejected with these comments:

"This rationale fails as a compelling state interest because it is wholly arbitrary and without support in logic or experience."

"Where the evil which the Legislature seeks to prevent can be directly prevented through nondiscriminatory legislation, and where the class singled out by the Legislature has no necessary connection with the evil to be prevented, the statute must be struck down as an invidious discrimination against that class."⁴³

The second argument fared no better:

"The claim of unwholesomeness is contradicted by statutes which permit women to work as cocktail waitresses, serve beer and wine from behind a bar (Bus. & Prof. Code, § 25655), or tend bar if they or their husbands hold a liquor license. The objection appears to be based upon notions of what is a 'ladylike' or proper pursuit for a woman in our society rather than any ascertainable evil effects of permitting women to labor behind those 'permanently affixed fixtures' known as bars. Such notions cannot justify discrimination against women in employment."⁴⁴

The court's conclusion was stated with devastating simplicity: "The state has not only failed to establish a compelling interest served by [the statute], but it has failed to establish any interest at all."⁴⁵ The statute was held to be violative of the equal protection clauses of the California and federal constitutions.

Sailor Inn is a remarkable decision. Although a few other state and federal courts have invalidated various types of sex discrimination on constitutional grounds, this opinion is by far the most penetrating. The California court is the first state court of last resort to accept the thesis that sex is a "suspect" classification. The same conclusion has been reached by at least one lower federal court,⁴⁶ but *Sailor Inn* appears at this time to be the most persuasive opinion addressed to the constitutional question. If other courts are moved to adopt this test of equal protection in the area of sex discrimination, then a greater incidence of success by those attacking sex classifications in future cases can be anticipated.

Sailor Inn may even have an influence upon those courts that choose not to apply the "strict scrutiny" standard to sex classifications. The California court's finding that the state had shown "no interest at all" in support of the statute suggests that the exclusion of women from bartending would not have survived even the "rational basis" test of equal protection. If other courts can be persuaded to follow this example and carefully analyze any alleged state interests that are advanced to justify sex discrimination,

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then it is likely that future decisions will more frequently accord with *Sail'er Inn* in result, if not precisely in legal theory.

Finally, *Sail'er Inn* must be recognized as a challenge to the Supreme Court to reexamine its traditional position on the constitutionality of sex discrimination, since the California statute was expressly held to be in violation of the equal protection clause of the fourteenth amendment. Although the court made a ritual attempt to distinguish *Goesaert*,⁴⁷ the main thrust of the *Sail'er Inn* opinion is irreconcilable with the sexist assumptions underlying that case, and the California court has in effect rejected its authority. This is an open invitation to the Supreme Court to reexamine *Goesaert* and similar decisions in the light of contemporary understanding of sex discrimination.

Finally, we note a recent case involving alleged discrimination against men.⁴⁸ A New York statute required the fingerprinting of all male employees of liquor wholesalers. A wholesaler whose license was cancelled for failure to comply with the fingerprinting requirement brought an action to have his license restored, on the ground that the requirement was discriminatory and therefore invalid.

This contention was rejected by the court on the ground that a rational basis exists for requiring fingerprints of male employees only. The legislature, it said, must have been concerned about the possibility that "strong-arm" tactics would be used by wholesalers against retailers in order to obtain business (a practice apparently dating back to Prohibition). In addition, the legislature apparently concluded that wholesalers would be likely to employ men for this purpose, but not women. Conceding this reasoning to be "slightly tenuous,"⁴⁹ the court nevertheless deferred to the legislative determination.

Sophisticated training in the use of physical force against another person is, of course, widely available to both men and women. Women who have mastered karate, judo or the use of firearms can injure or kill an adversary as easily as any man. How, then, can the legislative distinction be rationally justified? Only, it would seem, by clear evidence that women would not in fact utilize their destructive capabilities to further such illegal solicitation. The court concluded that such utilization would be "highly improbable," but failed to suggest any basis for this conclusion. Recent arrests of mugging gangs including females suggest that the conclusion is tenuous at best. This 1970 decision plainly demonstrates the stubborn persistence of the old myth of woman as a frail and delicate creature.

3. Wrestling

In its expression of male dissatisfaction with women's changing status, and of willingness to obstruct further change wherever possible, *State v. Hunter*⁵⁰ is a remarkable recent descendant of Mr. Justice Bradley's opinion in *Bradwell v. Illinois*.⁵¹ An Oregon statute regulating wrestling "exhibitions" totally excluded females from participation. The court upheld it against an equal protection challenge, purporting to find a rational basis for the exclusionary classification:

"We believe that we are justified in taking judicial notice of the fact that the membership of the legislative assembly which enacted this statute was predominantly masculine. The fact is important in determining what the legislature might have had in mind with respect to this particular statute, in addition to its concern for the public weal. It seems to us that its purpose, although somewhat selfish in nature, stands out in the statute like a sore thumb. Obviously it intended that there should be at least one island on the sea of life reserved for man that

would be impregnable to the assault of woman. It had watched her emerge from long tresses and demure ways to bobbed hair and almost complete sophistication; from a creature needing and depending upon the protection and chivalry of man to one asserting complete independence. She had already invaded practically every activity formerly considered suitable and appropriate for men only. In the field of sports she had taken up, among other games, baseball, basketball, golf, bowling, hockey, long distance swimming, and racing, in all of which she had become more or less proficient, and in some had excelled. In the business and industrial fields as an employee or as an executive, in the professions, in politics, as well as in almost every other line of human endeavor, she had matched her wits and prowess with those of mere man, and, we are frank to concede, in many instances had outdone him. In these circumstances, it is any wonder that the legislative assembly took advantage of the police power of the state in its decision to halt this ever-increasing feminine encroachment upon what for ages had been considered strictly as manly arts and privileges? Was the Act an unjust and unconstitutional discrimination against woman? Have her civil or political rights been unconstitutionally denied her? Under the circumstances, we think not."⁵²

This passage reveals, as clearly as any we have seen, that male judges are now fully aware of the growing dissatisfaction of many women with their male-imposed subordinate status. Significantly, judges will even concede that, once admitted to many of the spheres of human activity formerly denied them, women have performed at least as competently as men. Nevertheless, this court openly applauds legislative resistance to further female "encroachment," disdaining to conceal its male bias behind any protectionist facade such as the preservation of women's health or the prevention of "social problems." Candor, yes. Evenhanded administration of justice by an impartial tribunal, no. Indeed, the opinion virtually glorifies in its own revealed bias.

The same issue was raised recently in New York, where the State Athletic Commission refused to license female wrestlers.⁵³ An action seeking to invalidate this rule was dismissed by the Appellate Division⁵⁴ with the following comments:

"It has been argued that females have fared less well under the Equal Protection Clause than have males of certain minority groups which have long been the victims of discrimination. . . . Furthermore, the presumption of constitutionality of a classification requires the courts to assume the existence of a reasonably conceivable state of facts to sustain it. . . . It has also been suggested that the Commission's determination is founded on a mid-Victorian concept which females have long since abandoned and which has no place in this enlightened last third of the Twentieth Century. Notwithstanding any personal opinion or attitude we may hold in this respect, there is legal justification and support, under the legislation which created the Commission, for the determination made by it."⁵⁵

Even assuming that the court has stated the proper equal protection test, what "reasonably conceivable state of facts" justifies this particular discriminatory classification? Stating a test is no substitute for applying it. At an earlier point, the opinion contains a vague reference to past "infestation" of boxing and wrestling by "undesirable elements." Even if this is true, what is the rational connection between such infestation and the challenged rule? The court was silent. While the opinion is by no means an expression of overt sexism like *State v. Hunter*, it is also a far from satisfactory exposition of the reasoning process by which the decision was reached. If there was any rational basis for

the exclusion of women from wrestling, it does not emerge from a reading of the opinion.

4. Appointment of Administrators

Unlike corporate fiduciaries, individuals do not customarily make a business of serving as executors or administrators. In that respect, a limitation upon service by women in these fiduciary capacities is not a business or professional exclusion. But competent estate administration does require, among other things, sound judgment, administrative ability and an understanding of business practices. Male domination of the business world is a historical fact, although not nearly so pronounced now as previously.⁵⁶ In view of all this, may the legislature validly mandate a preference for males over females in the appointment of administrators?

This is the question raised by *Reed v. Reed*.⁵⁷ In Idaho, persons applying for letters of administration are entitled to judicial consideration according to a statutory order of priorities. The statute favors certain classes of relatives of the decedent over others and prefers all eligible relatives before creditors.⁵⁸ Certain persons are completely disqualified, including nonresidents, infants, criminals and those adjudged incompetent to perform the duties of administrator "by reason of drunkenness, improvidence or want of understanding or integrity."⁵⁹ Within any eligible class the probate court may grant letters to more than one person.⁶⁰ The controversial requirement is this: "Of several persons claiming and equally entitled to administer, males must be preferred to females. . . ."⁶¹

The disqualification provision makes it clear that the court is not required to prefer incompetent males over competent females; on the other hand, it also plainly shows that the purpose of the male preference provision could not be simply to prevent the selection of incompetent females. Rather, among members of the highest eligible category, none of whom is otherwise disqualified, the court is required to give preference to males.

In *Reed*, the decedent was survived by both adoptive parents. Each parent applied separately for letters of administration, and the probate court obeyed the legislative command by appointing the father. The mother then challenged this appointment on the ground that the male preference provision denied her equal protection of the laws. She was successful in the district court, but that judgment was reversed by the Supreme Court of Idaho.

That court purported to apply the "rational connection" test to determine whether or not the male preference requirement was so arbitrary and capricious as to violate equal protection. It was able to suggest two possible motives for the legislature's action: (1) promotion of prompt settlement of estates by curtailing disputes over the appointment of administrators; and (2) a feeling that men are generally better qualified than women to act as administrators. The second proposition apparently troubled the court somewhat, prompting this further amplification:

While this classification may not be entirely accurate, and there are doubtless particular instances in which it is incorrect, we are not prepared to say that it is so completely without a basis in fact as to be irrational and arbitrary."⁶²

Both of these rationales are faulty, even if one concedes that the appropriate standard of judicial review is "rational connection." There is an obviously legitimate state interest in expediting the process of estate administration; that does not mean, however, that every means by which this interest may be furthered is rational. Requiring every successful applicant to have red hair or demonstrate a capability to jog two miles in sixteen minutes would undoubtedly reduce the

number of competitors for appointment and thereby curtail litigation, but such requirements would have no rational connection with fitness to act as an administrator. The expediting-of-appointments argument is thus clearly a makeweight.

The second rationale, then, must be the decisive one. The court suggested that the Idaho Legislature had apparently determined that, as compared with men, women are generally deficient in business acumen. Nevertheless, the court conceded that such a characterization was not universally accurate; hence, a particular female applicant might in fact be as well or even better qualified to administer an estate than her male counterpart. Despite the obvious possibility that such cases will arise, the statute leaves the probate judge no discretion: Where the applicants are equally qualified, the male must be appointed; indeed, he must be preferred to the female even if he is in fact demonstrably less qualified. A clearer case of arbitrariness can hardly be imagined.

Perhaps the pernicious effect of the male preference requirement can be further illuminated by consideration of an analogous statute discriminating on the basis of race rather than sex.⁶³ Suppose the Idaho Legislature had enacted a similar statute which mandated a preference for whites over non-whites. Also, suppose that a particular decedent had no immediate family or that no member of his family wished to administer his estate; consequently, creditors of the estate would be eligible for appointment as administrator. Also suppose that the estate has only two creditors: Ebony Trust Co. and Joe's Grocery. The senior trust officer of the former (a black man) and the proprietor of the latter (white) have applied for letters of administration. While the grocer is a respected citizen operating a successful business, he did not finish high school, and has never served as a personal representative. Unless disqualified "for want of understanding or integrity," however, he must be appointed.

The trust officer appeals from the order of appointment, challenging the statute on equal protection grounds. Both arguments advanced by the court in *Reed* could be relevant here: the statutory preference for whites could help to avoid time-consuming controversies; and it might be shown that, on the average, whites have more formal education, more responsible jobs and more business experience than blacks.

Would these two arguments be sufficient to sustain the hypothetical statute against the trust officer's constitutional attack? Obviously not: the statute is based on an assumption of racial inferiority that is clearly invidious as applied to this individual appellant.

Can the statute in *Reed* be logically distinguished from this hypothetical statute? We would suggest that it cannot. Both types of discrimination rest on the fallacious assumption that generalizations which can accurately be made about a class as a whole are equally accurate with respect to each individual member of the class. In addition, statutes mandating various types of sex discrimination have reinforced a historical pattern of male domination over females. In this respect, such statutes serve the same function as statutes discriminating on the basis of race: they support and strengthen the power of one group (and its individual members) to dominate the members of another.

5. The "Judicial Process" in Female Exclusion Cases

With the notable exceptions of *Paterson Tavern & Grill Owners Association* and *Sailor Inn*, the opinions considered so far reveal three distinct forms of rationalization used to uphold state legislation that excludes or disadvantages females with respect to vari-

ous occupations or offices. These include: (1) express reliance on a mythology of male supremacy, which confines women to a subordinate social role and then patronizingly "protects" them against even their own attempts to change that role; (2) total deference to the legislature, despite serious assertions that its discriminatory enactments violate specific constitutional guarantees; and (3) cursory dismissal of these serious constitutional issues, on the basis of inadequately supported conclusions that rational connections do exist between sex discrimination and the promotion of some vaguely articulated state interest. The first of these is crude, unjudicial and offensive to an increasingly large number of both men and women. The other two are inadequate substitutes for clear thinking and reasoned analysis. Taken together, they constitute a pattern of flagrant judicial insensitivity to the injustice visited upon women by male-dominated state legislatures.

This pattern, we believe, will also be evident in the areas surveyed in the remainder of our discussion.

B. Labor regulation

It is a transcendent irony that one of the most celebrated and widely respected decisions in the history of the Supreme Court has, after sixty-odd years, come to be viewed as a "roadblock to the full equality of women."⁶⁴ The case is, of course, *Muller v. Oregon*,⁶⁵ Brandeis brief and all. *Muller*, it will be remembered, upheld the constitutionality of an Oregon statute that restricted the employment of women in any "mechanical establishment, or factory, or laundry" to ten hours per day. Three years earlier, in *Lochner v. New York*,⁶⁶ the Court had declared unconstitutional a New York law regulating maximum hours of work for all bakery employees, male as well as female. *Muller* did not overrule *Lochner*, but distinguished it on the ground that women require special treatment which the legislature may properly require employees to supply. Here is the relevant portion of the opinion:

"That woman's physical structure and the performance of material functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

"Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort to maintain an independent position in life she is not upon an equality. Differentiated by these matters from the

other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her."⁶⁷

The second quoted paragraph seems shockingly close to *Bradwell* in its male supremacist assumptions. The first properly recognizes that pregnant women are not able to perform some of the tasks that men or non-pregnant women do. Significantly, though, the statute applies to all women, whether pregnant or not. Thus, the court was moved to imply that woman's primary social function is reproduction. This idea is, of course, an integral part of the "grand design myth." While the *Muller* opinion is slightly more restrained than Justice Bradley's concurring opinion in *Bradwell*, its sexist assumptions are no different.

It now seems unfortunate that the Court did not expressly overrule *Lochner* and hold that "freedom of contract" does not inhibit states from exercising their police power to set maximum working hours. The sexist rationale would then not have been necessary, and the judiciary would have been deprived of one of its most frequently cited authorities for the general proposition that sex is a valid basis for legislative classification.⁶⁸

The constitutional issues raised by protective legislation have not been in the spotlight in recent years, due to the enactment of Title VII of the Civil Rights Act of 1964, which prohibits sex-based discrimination in employment unless the employee's sex is "a bona-fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."⁶⁹ In the wake of *Muller* and similar cases, several states enacted statutes regulating employment of women in a variety of respects.⁷⁰ In addition to wage and hour standards, these included limitations on the poundage that women could be required to lift. Since the effect of such laws frequently is to render women ineligible for certain jobs, their validity under Title VII was soon questioned.⁷¹ The Equal Employment Opportunity Commission has taken the position that protective regulations "have ceased to be relevant to our technology or the expanding role of female workers in our economy" and should not therefore be a defense to an otherwise unlawful employment practice.⁷² Several courts have now held that Title VII supercedes conflicting state protective laws as a matter of federal supremacy.⁷³ The issue will very likely make its way to the Supreme

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Court. To the extent that Title VII is held to invalidate such state regulation, *Muller* will have been superseded by congressional fiat.⁷⁴

Meanwhile, the Court has ruled on another aspect of Title VII in *Phillips v. Martin Marietta Corp.*⁷⁵ In that case, the employer's policy was to refuse even to consider hiring females with preschool children for a certain position, although no such exclusion was made in the case of similarly situated males. An unsuccessful female applicant challenged this policy, contending that it was a per se violation of the statute. This contention was rejected, and the case was remanded for further proceedings to determine whether or not the policy was within the bona fide occupational qualification exception.

Although Title VII has substituted the supremacy issue for equal protection where state-mandated sex discrimination is concerned, its ultimate effect may be to induce some judges to rethink their position on the broader question of sex discrimination and equal protection. If it does, the reason will be the bona fide occupational qualification exception. In *Richards v. Griffith Rubber Mills*,⁷⁶ for instance, an employer refused to promote a woman because of a state regulation prohibiting women from lifting more than fifty pounds; in the new job, she would occasionally be required to lift as much as sixty pounds. The court conceded that the regulation was probably valid under *Muller*, but nevertheless held it invalid under Title VII, which "no longer permits either employers or the states to deal with women as a class in relation to employment to their disadvantage. . . . Individuals must be judged as individuals and not on the basis of characteristics generally attributed to racial, religious, or sexual groups."⁷⁷

That "individuals must be judged as individuals" is, of course, also the essence of the equal protection argument. The reasoning employed in *Richards* to find a violation of Title VII could thus just as easily be used to strike down, on equal protection grounds, any state regulation that discriminates against individuals solely on the basis of their sex.

*Weeks v. Southern Bell Telephone & Co.*⁷⁸ also involved an employer's refusal to consider hiring women for certain jobs on the ground that these jobs were too "strenuous" for females. The court not only narrowly construed the bona fide occupational qualification exception, but placed on the employer the burden "of proving that he had reasonable cause to believe, that is, a *factual basis* for believing, that *all or substantially all* women would be unable to perform safely and efficiently the duties of the job involved."⁷⁹ This test seems less stringent than the principle stated in *Richards*, in that it would not necessarily invalidate every discrimination based on attributed group characteristics. On the other hand, it clearly prohibits discrimination justifiable only by reference to characteristics attributed to an "average" member of the affected group.⁸⁰

C. Places of public accommodation

Statutes and ordinances prohibiting women from patronizing bars or taverns, or regulating the manner of their patronage, were the subject of a flurry of litigation in the early twentieth century. These regulations, like those excluding women from working in bars, apparently reflected a strongly held belief that the combination of men, women and liquor in such places would be somehow detrimental to "public morality."

In an influential 1902 Colorado case,⁸¹ a saloon owner sought to enjoin the enforcement of such a regulation on constitutional grounds. A Denver ordinance, authorized by a provision of that city's charter, prohibited keepers of "liquor saloons, dram shops, or tipping houses" from admitting any women to their establishments, either as customers

or as employees. The petitioner had argued that a woman had the same right as a man to enter a saloon and buy a drink of liquor, and that to forbid him to sell liquor to women was therefore an unjustified interference with his business and a deprivation of property without due process of law. Granting its major premise, this argument seems compelling. The court, however, was not at all impressed. While conceding some validity to the petitioner's case, it nevertheless found a reason to sustain the ordinance:

"If a discrimination is made against women solely on account of their sex, it would not be good; but if it is because of the immorality that would be likely to result if the regulation was not made, the regulation would be sustained. That injury to public morality would ensue if women were permitted without restrictions to frequent wine rooms, there to be supplied with liquor, is so apparent to the average person that argument to establish so plain a proposition is unnecessary. But if some people might not be willing to concede this, it is enough to say that the general assembly, speaking through the city council, with whom the decision entirely rests, has so determined. Women, therefore, may properly be excluded from wine rooms, as this ordinance provides, and, if they have no constitutional right to insist upon being admitted to places there to be supplied with liquor, when the effect would be demoralizing to society, *a fortiori* the saloonkeeper may be prevented from furnishing them facilities for contributing to that result. . . . [T]he classification made with respect to the persons permitted to frequent wine rooms for supplying themselves there with liquor [is] based upon reasons that have their seat in the facts of nature, and . . . such regulations are conducive to, and are reasonably adapted to secure, the worthy object of preserving public morality."⁸²

A contrary result had been reached, however, in a 1900 Kentucky case. There the ordinance not only prohibited women from going into or out of saloons, but also made it a misdemeanor for any woman to "frequent, loaf, or stand around" within fifty feet of such an establishment. Penalties for violation of the ordinance could be assessed against both the offending female and any saloon keeper who permitted her to enter. In *Gasteneau v. Commonwealth*,⁸³ a saloon keeper convicted of violating this ordinance appealed on constitutional grounds. The prosecution argued that the ordinance had been enacted because "very disreputable, low and vile women congregate in and about saloons and places where liquor is sold, thereby causing affrays, fights, murder, and other crimes."⁸⁴ Agreeing that regulation of the conduct of such women was a proper subject for exercise of the police power, the court nevertheless held the statute invalid for overbreadth. For instance, it pointed out that lawful activities might quite properly bring even morally upstanding women within fifty feet of saloons. Furthermore, the court doubted whether well-behaved females could be excluded from frequenting saloons so long as their behavior was orderly and their purpose was lawful. The ordinance was held to be "unreasonable and an unnecessary interference with individual liberty."⁸⁵

Six years later, however, Kentucky courts were again presented with a challenge to the constitutionality of a similar ordinance, which provided as follows:

"It shall be unlawful for any infant or female to go into or be in and drink intoxicating liquors in any saloon . . . or for the keeper or proprietor or controller, or one in charge of such room or place of business, to suffer and admit such infant or woman to drink therein or to be or remain for over five minutes. . . . It shall be a defense to this ordinance if the person charged with its violation shall show that such infant or female was of good repute and was at the

time sober and orderly and had the consent so to do of the parent or guardian of the infant or husband of the female, or in case of reasonable necessity."⁸⁶

A prosecution for violation of this ordinance was dismissed by the circuit court, and the state appealed. The Court of Appeals upheld the ordinance, distinguishing *Gasteneau* on the ground that the overbreadth found in that case was not repeated in this ordinance.⁸⁷ The court was apparently convinced that the new ordinance offered sufficient protection to orderly, well-behaved women who visited saloons for lawful purposes, even though it placed upon defendants the burden of proving that they were within one of the exceptions stated in this ordinance.

Nevertheless, the ordinance was frankly sexist. It classed women with infants, as creatures requiring man's protection. It subjected any woman who remained in a saloon more than five minutes to the possibility of a criminal charge, and then placed the burden on her to justify herself—on the assumption, no doubt, that most females in bars for over five minutes were a threat to public morals. For married women, it required a showing of spousal consent, confirming the male role as woman's keeper or guardian.

Why should such an ordinance be enacted? Why did the court so readily agree that, when certain women are present together with liquor in a saloon, they "cause" men to fight and murder? Was the ordinance designed to keep "nice" girls "nice," by discouraging them from going into saloons? To protect men from their own antisocial, aggressive impulses? To make bars into male sanctuaries? To keep the husbands of "good" women from being tempted into liaisons with "loose" women? Whatever the motivation for such ordinances, they achieved their aim of regulating conduct by ascribing criminal or immoral tendencies to citizens on the basis of their sex, rather than by requiring a showing of actual immoral conduct.⁸⁸ These ordinances reflect two different facets of the female stereotype in the mythology of male supremacy. On the one hand, the female is viewed as a pure, delicate and vulnerable creature who must be protected from exposure to immoral influences; and on the other, as a brazen temptress, from whose seductive blandishments the innocent male must be protected. Every woman is either Eve or Little Eva—and either way, she loses.

Similar ordinances can still be found in some municipalities. In a 1969 case, *Galagher v. City of Bayonne*,⁸⁹ the ordinance prohibited tavern owners from allowing women to stand or sit at a bar; they could be served liquor only if seated at a table. Despite an earlier dictum suggesting the contrary,⁹⁰ the court held that the ordinance exceeded the limits of the city's police power. Reasoning by analogy to a recent decision invalidating a regulation which had prevented owners from allowing homosexuals to congregate at bars,⁹¹ the court concluded that the scope of permissible regulation extended to specific antisocial or immoral acts, but not to the "mere congregation" of women at a bar.

The practice of refusing service to women at bars is not solely the result of state law. It often reflects private policies. For instance, the Rainbow Lounge in the Hotel Syracuse had a policy against serving unescorted women at its bar, although apparently they could be served at tables. In *DeCrow v. Hotel Syracuse Corp.*,⁹² a female who had been refused service sought a federal court injunction against the continuance of this policy on the ground that it violated the equal protection clause, the Civil Rights Act of 1964⁹³ and a number of other federal civil rights statutes.⁹⁴ Her action was dismissed for lack of jurisdiction on two grounds. First, it was held that the public accommodations provi-

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sions of the 1964 Act⁹⁵ (unlike Title VII) do not prohibit sex discrimination; secondly, the equal protection clause and the other statutes were interpreted as requiring a showing of state action, which the court found to be absent in this case.

Plaintiff then proceeded in the state courts, contending that defendant's policy was in violation of various provisions of the New York Civil Rights Law. She was again unsuccessful.⁹⁶ Although the state statute provides that "all persons" are entitled to full and equal facilities and privileges in places of public accommodation, it only prohibits owners from denying equality "on account of race, creed, color or national origin."⁹⁷ The court held that sex discrimination was not a violation of the latter provision. Another section of the statute declares it to be a misdemeanor for any innkeeper to refuse "without just cause or excuse, to receive and entertain any guest."⁹⁸ This provision was not violated, said the court, because the defendant did not refuse to serve the plaintiff; service was merely conditioned on the female's having an escort or being willing to sit at a table.

The first line of reasoning may be defensible on the ground that sex discrimination was not specifically prohibited by the statute; it is nevertheless a narrow construction in the light of the statute's purpose and the declaration that all persons are entitled to equal service. The second rationale, however, is indefensible: The attempt to characterize the effect of the hotel's policy as conditional service, rather than as a refusal to serve, is an exercise in sophistry. Suppose persons of a certain race were prohibited from sitting in certain sections of restaurants, or from living in certain areas of a city or riding in certain parts of a bus. Would anyone seriously contend that this is "conditional acceptance" of, rather than refusal to accept, members of that race?

The hotel's policy should have been recognized for what it was—a refusal to serve unescorted women under circumstances where unescorted men would receive service. The fact that unescorted women (and men) could sit at tables or that escorted women (or men) could sit at the bar is therefore simply irrelevant. In terms of the statute, then, the only real question is whether or not this refusal of service was for "just cause or excuse." It was incumbent upon the court to inquire as to the reasons for the defendant's policy and then to test them against the statute's purpose of guaranteeing freedom from discrimination in places of public accommodation. By resorting to the specious "conditional service" rationale, the court abdicated this responsibility.

Private discrimination was again challenged on federal constitutional grounds in *Seidenberg v. McSorley's Old Ale House, Inc.*⁹⁹ The facts were similar to the *DeCrow* cases, except that no female had ever been served at the defendant's establishment, at the bar or elsewhere. Declining to follow the first *DeCrow* decision, however, the district court denied a motion to dismiss the action for want of jurisdiction.¹⁰⁰ There being no issue as to any material fact, both parties moved for summary judgment, and the plaintiff's motion was granted.

In order to reach the constitutional issue, the court first had to find that the defendant's exclusionary policy constituted state action. It conceded that the Supreme Court has never ruled that a private commercial enterprise is subject to the fourteenth amendment solely because it is licensed by the state. The court nevertheless held that the compelling public interest in the liquor trade, coupled with New York's pervasive regulatory scheme, justified the requirement that the defendant conduct its business on

the same principle of equality applicable to the state itself.

Having reached the equal protection issue, the court proceeded to test defendant's policy against the rational basis standard:

"In the case before us no difference between men and women, as potential customers of the defendant, has been offered as a rational basis for serving the one and not the other. It may be argued that the occasional preference of men for a haven to which they may retreat from the watchful eye of wives or womanhood in general to have a drink or pass a few hours in their own company, is justification enough; that the simple fact that women are not men justifies defendant's practice. The answer is that McSorley's is a public place, not a private club, and that the preferences of certain of its patrons are no justification under the Equal Protection Clause. Such preferences, no matter how widely shared by defendant's male clientele, bear no rational relation to the suitability of women as customers of McSorley's."

"Nor do we find any merit in the argument that the presence of women in bars gives rise to 'moral and social problems' against which McSorley's can reasonably protect itself by excluding women from the premises. . . . Outdated images of bars as dens of coarseness and iniquity and of women as peculiarly delicate and impressionable creatures in need of protection from the rough and tumble of unvarnished humanity will no longer justify sexual separatism."¹⁰¹

In *Seidenberg*, as in *Gallagher*, a court has finally repudiated the notion that every woman should be viewed as either an innocent or a temptress—and in either case, as somehow man's inferior—to be guarded or guarded against. Once this attitude has been overcome, there is no further justification for discrimination against female patrons in bars. These two opinions have established a new model for judicial review of discriminatory ordinances and policies applicable to places of public accommodation.

Their influence need not be confined to this area of law, however. Many kinds of sex discrimination are rationalized, even today, on the basis of stereotypes just as simplistic and exaggerated as those reflected in the liquor cases. As other courts are persuaded to follow the example set in *Sail'er Inn*, *Seidenberg* and *Gallagher*, they will be obliged to make a more searching inquiry into the rationality of any sex classification challenged on equal protection grounds. They will no longer be content to uphold discriminatory laws merely as a gesture of total deference to the legislature or as a shield against some ill-defined threat to public morality. Even more importantly, they will reexamine their own uncritical acceptance of stereotypical ideas about sex characteristics as appropriate grounds for legislative distinctions.

D. Jury qualification

The common law jury, grand and petit, was exclusively a male institution.¹⁰² The right (or duty) of women to serve as jurors was not recognized in America until the early twentieth century, when women began to obtain voting rights.¹⁰³ There is, however, one series of nineteenth-century opinions from the Washington Territory which vividly suggests how one male judge viewed the desirability of permitting women to serve on juries.

A Washington statute provided that all "qualified electors" were eligible to serve as petit jurors and all "qualified electors and householders" were eligible to serve as grand jurors. In *Rosencrantz v. Territory*,¹⁰⁴ a female defendant had been indicted by a grand jury composed in part of married women living with their husbands. She appealed, claiming that her indictment had been returned by an improperly constituted grand jury. The Supreme Court of the Territory denied her appeal, noting that the franchise

had been extended to Washington women by statute and that the female jurors were thus "qualified electors." But the court construed the statute as requiring grand jurors to be both "qualified electors" and "householders." Whether a married woman living with her husband could be a "householder" was thus the determinative issue. The court concluded that the local Married Women's Act conferred sufficient joint control over the family property and children so that both husband and wife could be deemed "householders" within the meaning of the jury statute. The majority opinion did not discuss the desirability of having women on juries; it did, however, suggest that the principle of equality expressed in the Married Women's Act constituted a "spirit of progress."¹⁰⁵

The decision evoked a furious dissent from Judge Turner. He contended that, in light of the jury's history as an institution, "qualified electors" was meant to refer exclusively to qualified male electors; in any event, he argued, married women were not "householders." In elaborating the first of these two arguments, he revealed a strong opinion on the underlying question of policy:

"It is said that the rights of the weaker sex, if I may now call them so, are more regarded than in the days of Blackstone, and that the theory of that day, that women were unfitted by physical constitution and mental characteristics to assume and perform the civil and political duties and obligations of citizenship, has been exploded by the advanced ideas of the nineteenth century. This may be true. No man honors the sex more than I. None has witnessed more cheerfully the improvement in the laws of the states, and particularly in the laws of this territory, whereby many of the disabilities of that day are removed from them, and their just personal and property rights put upon an equal footing with those of men. I cannot say, however, that I wish to see them perform the duties of jurors. The liability to perform jury duty is an obligation, not a right. In the case of woman, it is not necessary that she should accept the obligation to secure or maintain her rights. If it were, I should stifle all expression of the repugnance that I feel at seeing her introduced into associations, and exposed to influences which, however others regard it, must, in my opinion, shock and blunt those fine sensibilities, the possession of which is her chiefest charm [*sic*], and the protection of which, under the religion and laws of all countries, civilized or semi-civilized, is her most sacred right."

"If one woman is competent as a juror, all women having the same qualifications are competent. If women may try one case, they may try all cases. It is unnecessary to say more; to suggest the shocking possibilities to which our wives, mothers, sisters, and daughters may be exposed, unless the legislature should hereafter relieve us from what I believe to be a mistaken construction of the law. These observations, however, are not pertinent here. The question is, what is the law? I say that the law now concerning the important incidents of a jury trial are, by express constitutional provision, what they were at the common law, and that under that law a jury was no jury unless it was composed of men."¹⁰⁶

Judge Turner had an equally strong view on the question of whether a married woman living with her husband could be a "householder" within the meaning of the statute:

"The husband was not only the head of the family at common law, because under that law he had the right to be obeyed by all the family, including the wife, but because of inherent and acquired differences between himself and wife in mental and physical constitution. He was better fitted to wage the war for present subsistence, and to accumulate the competence that was to

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make provision against want in the future. The experience gained by him in prosecuting this branch of the partnership matured his judgment, strengthened his will, and made him confident and self-reliant. I believe that the facts I have mentioned obtain to this day, and that they operate and will continue to operate to give the husband paramount authority in the household, as that term is understood at common law, until an upheaval of nature has reversed the position of man and woman in the world. Legislative enactment would not make white black, nor can it provide the female form with bone and sinew equal in strength to that with which nature has provided man. No more can it reverse the law of cause and effect, and clothe a timid, shrinking woman, whose life theater is and will continue to be and ought to continue to be, primarily the home circle, with the masculine will and self-reliant judgment of a man."¹⁰⁷

Three years later, in *Harland v. Territory*,¹⁰⁸ the same court was faced with the same issue of jury service by women. Perhaps in part due to personnel changes on the court, a majority of the judges joined in Judge Turner's opinion overruling *Rosenkrantz*.¹⁰⁹

Female eligibility for jury service was not widely litigated until the years immediately following World War I, when, as result of the nationwide women's suffrage movement, the nineteenth amendment was adopted. Since jury qualification in many states was linked in some respect to voting eligibility, the extension of suffrage to women frequently raised—as it had in the Washington Territory cases—the question of whether women were thereby qualified to serve on juries.¹¹⁰

Where the statute defined eligibility for jury service in terms of "qualified electors" or some similar phrase, many state courts held that the extension of suffrage to women automatically made them eligible to serve as jurors.¹¹¹ In other states with similar statutes, the opposite result was reached; a notable example is *Commonwealth v. Welosky*.¹¹²

In *Welosky*, the defendant challenged the array of jurors on the ground that women had been excluded. The applicable Massachusetts statute provided that every "person qualified to vote" for the legislature should be eligible for jury service.¹¹³ Despite the extension of suffrage to female citizens of Massachusetts, the court held that the legislature had not intended the reference in the statute to a "person qualified to vote" to include females:

"It is unthinkable that those who first framed and selected the words for the statute now embodied in G.L.c. 234, § 1, had any design that it should ever include women within its scope. It is equally inconceivable that those who from time to time had reenacted that statute had any such design. When they used the word "person" in connection with those qualified to vote for members of the more numerous branch of the General Court, to describe those liable to jury service, no one contemplated the possibility of women becoming so qualified. The same is true in general of those who from time to time reenacted the statute in substantially the same words. No intention to include women can be deduced from the omission of the word male. That word was imbedded in the Constitution of the Commonwealth as a limitation upon those citizens who might become voters and thereby members of a class from which jurors might be drawn. It would have been superfluous also to insert that word in the statute."¹¹⁴

The court's conclusion as to legislative intent was bolstered by two other points, both of which have become familiar themes: a felt necessity to exempt at least some women from jury service, and the lack of suitable accommodations for women jurors.¹¹⁵

As in *Welosky*, most state courts treated the eligibility issue as one of statutory construction.¹¹⁶ In North Carolina, however, a constitutional issue was determinative. In *State v. Emery*,¹¹⁷ it was held that the state constitution, which provided for the "ancient mode of trial by jury" and for conviction only by "a jury of good and lawful men," precluded the extension of jury service to females. The majority rested its holding entirely upon the unchallenged fact that trial by jury at the common law consisted of trial by male jurors. One dissenting justice commented on this at length:

[I]f the language of the Constitution should not be held to a rigid and inelastic construction when it conflicts with the progress of human thought and changing social conditions. It should be more liberally constructed so as to meet the needs of a complex and growing civilization. I think this section of the Constitution is capable of the reasonable interpretation, in accord with modern thought, which would not disqualify women from this important service. I think it should be given this interpretation in the light of the progressive changes in the status of women and their equal share with men in the powers and responsibilities of government and justice. I do not think the courts should be restricted to the mere ascertainment of what we think now was in the minds of the framers of the Constitution who, however wisely they laid the foundations, could not envision the limitless future, else we should be fettered by the dead hand of the past."¹¹⁸

The other dissenter, however, delivered the *coup de grace* to the majority with a more laconic observation: "The most insistent argument advanced in behalf of appellants is that women have never been permitted to serve on juries. Which goes to show that an attitude can be more formidable than an argument."¹¹⁹

As the eligibility of women for jury service came to be more widely recognized and the presence of females on juries became commonplace, two new questions were raised: Can a state properly exclude all women from jury service? Alternatively, can a state permit all prospective women jurors voluntarily to exempt themselves from service?

The United States Supreme Court has never directly ruled on the first question, but *Strauder v. West Virginia*¹²⁰ contains a frequently quoted dictum on the subject. The issue in *Strauder* was whether a Negro could lawfully be tried under a statute limiting jury service to white male citizens. Holding the statute's racial classification to be in violation of the equal protection clause of the fourteenth amendment, the Court added:

"We do not say that within the limits from which it is not excluded by the amendment a State may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the Fourteenth Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it. . . . We are not now called upon to affirm or deny that it had other purposes."¹²¹

Since *Strauder*, the Court has decided three cases involving the exclusion of women from juries. In none of these, however, was the exclusion prescribed by state law. Two involved federal juries chosen at a time when the federal statute referred to state law for standards of jury eligibility. In *Ballard v. United States* the Court indicated that exclu-

sion of females from the federal jury had been improper, since the state law involved there expressly qualified women for service.¹²² Speaking for four of the five-man majority, Mr. Justice Douglas eloquently stated a case for inclusion of women on juries:

"It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded."¹²³

The third case, *Fay v. New York*,¹²⁴ involved a number of challenges to a New York "blue ribbon" grand jury, one of which alleged systematic discrimination against women in selecting the venire.¹²⁵ The Court affirmed the lower court's conclusion that appellant's evidence did not establish this contention, but went on to suggest that the exclusion of women from juries would not raise a serious constitutional question:

The first state to permit women jurors was Washington, and it did not do so until 1911. In 1942 only 28 states permitted women to serve on juries and they were still disqualified in the other 20. Moreover, in 15 of the 28 states which permitted women to serve, they might claim exemption because of their sex. It would, in the light of this history, take something more than a judicial interpretation to spell out of the Constitution a command to set aside verdicts rendered by juries unlearned by feminine influence. The contention that women should be on the jury is not based on the Constitution, it is based on a changing view of the rights and responsibilities of women in our public life, which has progressed in all phases of life, including jury duty, but has achieved constitutional compulsion on the states only in the grant of the franchise by the Nineteenth Amendment. We may insist on their inclusion on federal juries where by state law they are eligible but woman jury service has not so become a part of the textual or customary law of the land that one convicted of crime must be set free by this Court if his state has lagged behind what we personally may regard as the most desirable practice in recognizing the rights and obligations of womanhood."¹²⁶

Although understandable in its reluctance to impose federal constitutional standards in an area historically within the states' competence to control, this dictum nevertheless calls to mind—in its total reliance on historical practice as justification for sex discrimination—the dissenter's observation in *State v. Emery* that attitudes can be more formidable than arguments.

A 1939 Florida opinion is also worthy of note on the exclusion issue. In *Hall v. State*,¹²⁷ a statute restricting jury service to males was challenged by a female defendant. Relying on the *Strauder* dictum, the court rejected her contention that the statute violated the fourteenth and fifteenth amendments. The court further concluded

that the exclusion of women from the jury could not have prejudiced the defendant:

"It is not contented that juries composed of men would be less fair to women defendants than would juries composed of women. Indeed, experience would lead to a contrary conclusion. The spirit of chivalry and of deep respect for the rights of the opposite sex, have not yet departed from the heads and hearts of the men of this country."¹²⁸

The court's facile assumption may be questioned in light of the fact that the defendant in this case was accused of having given perjured testimony against a male defendant in an earlier murder trial. She was convicted by the all-male jury and sentenced to life imprisonment.¹²⁹

The first square holding that exclusion of women from juries violates the equal protection clause of the fourteenth amendment was *White v. Crook*,¹³⁰ a case involving the Alabama jury statute. Ignoring the *Strauder* dictum, the court expressed its conclusion as follows:

"Women are allowed to serve on juries in the federal courts and in the courts of forty-seven states. Only in three—Alabama, Mississippi and South Carolina—are women completely excluded from jury service. The time must come when a state's complete exclusion of women from jury service is recognized as so arbitrary and unreasonable as to be unconstitutional. As to Alabama, we can see no reason for not recognizing that fact at the present time."¹³¹

Without questioning the soundness of the result, we might point out that the opinion relies on nose-counting as its means of determining the scope of fourteenth amendment guarantees; in this respect, it is open to the same criticism as *Fay v. New York*.

The State of Alabama did not appeal from the *White* decision, and all three statutes completely excluding women from jury service have since been repealed.¹³² Subsequent to *White*, and prior to its repeal, however, the Mississippi statute was upheld by the supreme court of that state.¹³³ The following paragraph is the only portion of the opinion in which any reason was advanced to justify exclusion:

"The legislature has the right to exclude women so they may continue their service as mothers, wives, and homemakers, and also to protect them (in some areas, they are still upon a pedestal) from the filth, obscenity, and noxious atmosphere that so often pervades a courtroom during a jury trial."¹³⁴

With the demise of exclusionary state statutes, the issue raised in *White* might appear to be moot. Cases may well arise, however, in which relief is sought from various other exclusionary practices. For example, the Fifth Circuit Court of Appeals has recently ruled that, in light of Mississippi's new statute making women eligible for jury service, state officials have a duty not to discriminate by including only a token proportion of women on the jury list.¹³⁵

Now that statutory exclusion of females from juries is at least out of fashion, if not unconstitutional, primary attention is shifting from exclusion to exemption. Statutes in a number of jurisdictions permit women, though eligible for service, to exempt themselves solely on account of their sex. Such statutes have been consistently upheld against the claim that they unconstitutionally discriminate against female defendants¹³⁶ or against prospective male jurors.¹³⁷

Some exemption statutes give every female summoned for jury duty the privilege of excusing herself from service. In a few states, the statutes have gone even further, providing that no woman is to be placed on the jury list unless she has previously filed a statement of her willingness to be called for service. The rationale for the latter type of

statute is that it avoids the inefficiency of summoning many women who would choose to claim their exemption if called.

In *Hoyt v. Florida*,¹³⁸ a statute of this latter type was upheld by the Supreme Court against an equal protection attack. Noting that eighteen states permitted an automatic exemption for women and that three of these implemented this policy by calling only those women who had previously volunteered, the Court found that there was a rational basis for Florida's system:

"Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a State, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities."¹³⁹

The appellant also contended that Florida's statute, as applied, was unconstitutionally discriminatory. She pointed out that, out of some 46,000 eligible women voters in her county, only 220 had volunteered for jury duty during the eight years women had been eligible for such service. "Beside the point," the Court responded; "[g]iven the reasonableness of the classification . . . the relative paucity of women jurors does not carry" any "constitutional consequence."¹⁴⁰ Given the fact—accepted by the Court—that the end product of the Florida system in defendant's county was a jury list of 10,000 persons, of which only ten—ten!—were women, it is apparent that the Florida system was the functional equivalent of total exclusion.¹⁴¹

As indicated above, the Court has never held that outright exclusion of women from juries is a violation of equal protection. For many years, however, the Court has consistently condemned racial exclusion in jury selection.¹⁴² The *Hoyt* opinion attempted to explain this seeming anomaly:

"This case in no way resembles those involving race or color in which the circumstances shown were found by this Court to compel a conclusion of purposeful discriminatory exclusions from jury service. . . . There is present here neither the unfortunate atmosphere of ethnic or racial prejudices which underlay the situations depicted in those cases, nor the long course of discriminatory administrative practice which the statistical showing in each of them evinced."¹⁴³

The meaning of this passage is obscure. At best, it overlooks the obvious fact that statutes exempting women from jury service do reflect the historical male prejudice against female participation in activities outside the family circle. At worst, it can be read as condoning that prejudice by suggesting that, although racial and ethnic prejudice are "unfortunate," sex prejudice is not.

Notwithstanding *Hoyt's* susceptibility to such criticism, any judge thereafter facing a federal constitutional challenge to a similar exemption for women could simply cite that case as dispositive.¹⁴⁴ In two recent cases involving the New York jury statute however, judges have seen fit to add further embellishment to the *Hoyt* rationale, thereby reflecting their own attitudes toward this type of sex discrimination.

In *Leighton v. Goodman*,¹⁴⁵ a male called for jury duty sought an injunction against the county clerk's enforcement of the summons. Plaintiff challenged the jury statute on equal protection grounds: that by providing automatic exemption for women—all women—it in effect discriminated against all males. Although acknowledging that "the time may very well be ripe" for the

legislature to amend the statute, the district court nevertheless held the constitutional claim "patently insufficient as a matter of law." Adhering to the "rational basis" test, the court suggested a justification for the exemption:

"Granted that some women pursue business careers, the great majority constitute the heart of the home, where they are busily engaged in the 24-hour task of producing and rearing children, providing a home for the entire family, and performing the daily household work, all of which demands their full energies. Although some women now question this arrangement, the state legislature has permitted the exemption in order not to risk disruption of the basic family unit. Its action was far from arbitrary."¹⁴⁶

Even if the court's factual assumptions were correct,¹⁴⁷ the view of women here expressed is reminiscent of that expressed by Judge Turner nearly ninety years ago.

In *DeKosenko v. Brandt*,¹⁴⁸ plaintiff, a female tenant suing her landlord, also challenged the New York jury law on constitutional grounds, claiming that it would deprive her of a fair jury. Her claim was denied by the New York County Supreme Court in an opinion defective in so many different ways that no description here could possibly do it justice. As an inducement to the reader to see for himself, we present the final passage:

"Plaintiff is in the wrong forum. Her lament should be addressed to the 'Nineteenth Amendment State of Womanhood' which prefers cleaning and cooking, rearing of children and television soap operas, bridge and canasta, the beauty parlor and shopping, to becoming embroiled in plaintiff's problems with her landlord."¹⁴⁹

We offer the following translation: "Plaintiff cannot complain of the absence of women on her jury, because that results from the willingness of women to claim their exemption, not from the mere existence of the exemption itself." As the dissenting Florida judge in *Hoyt* remarked in his opinion:

"[I]t seems to me that if the present restriction upon female jury service were constitutional, then we must hold that the legislature could validly require all women to serve but limit male service to volunteers and thus, in effect, create an all female jury system."¹⁵⁰

In such a situation, would an absence of males from the jury thereafter be ascribed to "the State of Manhood, which prefers golf, bowling and working for a living to becoming embroiled in another male's lawsuit"?

Despite the general judicial acquiescence, we submit that an automatic jury exemption for women should raise a serious equal protection question. We doubt that any statute would today be upheld which provided that all black persons (or, for that matter, all white persons) should have an automatic exemption from jury service.¹⁵¹ Is a blanket exemption for all females any more justifiable? Granted that many females have work or child care responsibilities (or health disabilities) which might justify excusing them from service, it is difficult to imagine any excuse (except pregnancy, a condition hardly shared at any one time by even a majority of the women in America) which could not also be advanced by a man similarly situated.¹⁵² How then is it possible to maintain that an exemption for every woman—including even the childless, single woman, and the working wife or mother—is not an arbitrary discrimination when based solely on her sex? Such a scheme, we submit, is based—and court opinions right up to the present day support our contention—on an additional assumption: that women are delicate creatures to be encouraged to stay at home and be protected from the hard, cruel world—and incidentally, as long as they are at home, to do the cooking, cleaning, mend-

Footnotes at end of article.

ing and ironing for those of us who do have the affairs of the world to attend to.

E. Public education

Although the dominant form of public education in the United States today is obviously "coeducation" (both sexes taught in the same schools and usually in the same classes), a number of public institutions of higher learning are not coeducational. In recent years a few courts have been called upon to decide the validity of a state educational policy providing for separation of the sexes; overall, the results represent at best a limited recognition of the right to equal educational opportunity regardless of sex.

Two such cases have come before the Texas Court of Civil Appeals. In 1958, in *Heaton v. Bristol*,¹⁵³ female plaintiffs had sought to enter Texas A. & M., an all-male institution. Reversing the lower court, the appellate court held—despite uncontroverted findings by the trial court that Texas A. & M. offered several courses of study not available at any other public institution of higher learning in the state—that no constitutional right of the plaintiffs had been violated. First, it was not shown that plaintiffs desired to take any of the courses unique to that institution. Nor was the court impressed by plaintiffs' argument that, by denying them the right to attend this particular institution, which was most near their homes and thus most convenient, the state had denied them equal protection. Finally, the court relied upon the existence of compulsory military training at Texas A. & M. as evidence of its unsuitability for females and pointed to the lack of any precedent upholding plaintiffs' position.

To determine whether there is unequal treatment of the sexes, the court stated, one must view the state's entire higher education system. The court concluded that the Texas system did make "ample and substantially equal provision for the education of both sexes."¹⁵⁴ In the court's view, the question was simply whether the state may constitutionally maintain, along with sixteen coeducational institutions, two which are not coeducational—one male, one female:

"We think undoubtedly the answer is Yes. Such a plan exalts neither sex at the expense of the other, but to the contrary recognizes the equal rights of both sexes to the benefits of the best, most varied systems of higher education that the State can supply."¹⁵⁵

A similar action was brought two years later in *Allred v. Heaton*,¹⁵⁶ and in that case, at least one of the plaintiffs declared her desire to enroll in floriculture, one of the courses apparently not available at any other campus in the Texas university system. The court, possibly dubious of her good faith since she had once declared an intention to study law, held that, since the applicants (relying on the stated policy of exclusion) had not submitted applications for admission, they were precluded from relief. In affirming generally its earlier position with respect to sex-segregated education, the court indicated in dictum that should the plaintiff in fact apply for admission to study floriculture, she should not be excluded solely on the basis of her sex.¹⁵⁷ Upon rehearing, the college moved to strike that paragraph from the court's opinion, as constituting dictum. The court granted the motion without comment. This was not the only dictum in the opinion, however; consider the following:

"Surely the Supreme Court of the United States will not attempt to interfere with the public policy of the sovereign states of this nation in the management and control of their respective education systems so long as such systems do not discriminate against color or race."¹⁵⁸

A far different view of the constitutional issues was expressed in *Kirstein v. Rector and Visitors of the University of Virginia*,¹⁵⁹ a 1970 decision involving the College of Arts and Sciences of the University of Virginia at Charlottesville. A three-judge federal district court held that refusal to admit women to the college was a denial of equal protection, since the college offered courses of instruction not found elsewhere in the state and because its degree had greater "prestige" than that of any other state college. The court did, however, deny plaintiffs' claim for relief, on the ground that a plan for implementing coeducation at the campus had already been adopted. The court expressly declined to decide whether it was impermissible for the state to operate any institution of higher learning restricted to one sex, on the ground that plaintiffs lacked standing to raise the issue. The court was also careful to skirt—in a footnote—the question of whether the ghost of *Plessy v. Ferguson*¹⁶⁰ still walks: "We need not decide on the facts of this case whether the new discontinued principle of 'separate but equal' may have lingering validity in another area—for the facilities elsewhere are not equal with respect to these plaintiffs."¹⁶¹

The most recent case to call into question a state's operation of sex-segregated educational facilities is *Williams v. McNair*,¹⁶² a suit in which several males sought to enjoin South Carolina's operation of Winthrop College on a for-girls-only basis. South Carolina maintains a substantial number of university-level institutions, only two of which are segregated by sex—Winthrop and the Citadel, an all-male military academy. The court denied relief, noting that there is a respectable body of opinion which supports single-sex education on the ground that an educational institution can advance its effectiveness by concentrating on "areas of primary interest to only one sex." In the court's view, this was sufficient to demonstrate that the state's discrimination was not "wholly wanting in reason."¹⁶³ The court did not go so far as to suggest that the state could maintain all its educational institutions on a sex-segregated basis, but it did declare that on the facts presented, where there were coeducational institutions available to every student in the state, equal protection had not been denied. The *Kirstein* case was distinguished with ease on the ground that the court there had specifically found that equal facilities were not available to women elsewhere in the state university system. The *Williams* decision has recently been affirmed without opinion by the United States Supreme Court.

The district court in *Williams* was careful to avoid the kind of overt sexist rhetoric that has marred court opinions in many sex-discrimination cases, and at first blush the decision seems not only predictable but reasonable in light of the general availability of quality coeducation in the state. But closer examination may be in order. The statute establishing Winthrop College described its curriculum as follows: "such education as shall fit them [young women] for teaching" and also "stenography, typewriting, telegraphy, bookkeeping, drawing (freehand, mechanical, architectural, etc.), designing, engraving, sewing, dressmaking, millinery, art, needlework, cooking, housekeeping and such other industrial arts as may be suitable to their sex and conducive to their support and usefulness," together with such other subjects "as the progress of the times may require."¹⁶⁴ To evaluate this case, it may be useful to return to the racial analogy:

1) May the state properly operate only one college, for whites only? Clearly not. Could it operate only one, and only for men? The *Williams* opinion concedes that it could not.

2) Could it operate only two colleges, one for whites and one for blacks? Again, clearly not. Could it operate only two colleges, one

for women and one for men? The *Williams* opinion is silent. In view of the long history of male dominance, we suggest that the adoption of such a scheme by a male-dominated legislature would at least raise a constitutional question. If accompanied by different curricula, clearly reflecting stereotypical attitudes about sex roles, a strong inference would arise that the scheme reflected an assumption that women are inherently incapable of education on an equal basis with men—just as clearly as the race-segregated schools of the South indicated a similar belief about the races.

3) Can the state operate separate schools for the races, so long as it maintains at least some school where the races are mixed? Any plan where the white citizens of a state were given the option of education in black-free state colleges would seem in clear violation of the school segregation decisions,¹⁶⁵ whether or not any integrated schools were also available. Should the same result follow in a sex-segregation case?

To the *Williams* court and apparently to the Supreme Court as well, the answer is clear: no violation here. But consider the facts of *Williams*: In addition to its coeducational colleges, South Carolina operates two sex-segregated institutions—Winthrop, a school apparently designed to produce secretaries and homemakers, and the Citadel, a military school offering a full range of liberal arts and engineering degrees. To pursue the race analogy a bit further, suppose that South Carolina, in addition to operating one or more racially mixed institutions, should maintain two other colleges. One, Dred Scott Institute, would offer degrees in agriculture, music, dance and physical education; it would accept only black students. The other, Calhoun College, would offer degrees in nuclear physics, medicine, law, engineering and business administration; only whites need apply. Even assuming that all of these studies were available at a biracial institution in the state, would such a scheme survive constitutional scrutiny?

It is difficult to see how; indeed, any other answer is unthinkable. And yet, the maintenance of two institutions for the sexes in South Carolina, one for male warriors and the other for female domestics, is different only in that the assumptions it reflects about individual capabilities and aspirations are more widely shared. The role of a housewife or a secretary is an honorable and productive one; so of course is the role of a champion athlete or a tenant farmer. To attack the attitudes reflected in the *Williams* decision is not to denigrate the individuals for whom such stereotypes happen to be accurate; it is to attack the arrogant assumption that merely because these stereotypes are accurate for some individuals, the state has a right to apply them to all individuals—and, indeed, to shape its official policy toward the end that they shall continue to be accurate for all individuals.

F. Criminal sentencing

State statutes prescribing the term of imprisonment for various crimes sometimes distinguish between offenders on the basis of sex. In some cases, the statute permits the sentencing judge to set a fixed term (within a stated range) for an offender of one sex, while requiring an indeterminate sentence for an offender of the other.

In *State v. Heitman*,¹⁶⁶ a Kansas statute provided that a female over eighteen should be sentenced to confinement for an indeterminate term of no more than the maximum sentence fixed by law for her offense. The female defendant had been convicted of a misdemeanor punishable by thirty days to six months imprisonment and was accordingly sentenced to an indeterminate term of six months. She appealed on equal protection grounds: Had she been a man, the judge in his discretion could have sentenced her to a fixed term of less than six months. The trial court's action was affirmed. Although recog-

Footnotes at end of article.

nizing the principal that "no different or higher punishment shall be imposed on one than that which is prescribed for all, for the same offense."¹⁶⁷ The Kansas Supreme Court concluded that sufficient differences exist between men and women to justify classification by sex in the correction and rehabilitation of criminals:

"It required no anatomist, or physiologist, or psychologist, or psychiatrist to tell the Legislature that women are different from men. In structure and function human beings are still as they were in the beginning. 'Males and females created He them.' It is a patent and deep-lying fact that these fundamental anatomical and physiological differences affect the whole psychic organization. They create the differences in personality between men and women, and personality is the predominating factor in delinquent careers. It was inevitable that, in the ages during which woman has been bearer of the race, her unique and absolutely personal experiences, from the time of conception to the time when developed offspring attains maturity, should react on personality, and produce what we understand to be embraced by the term 'womanhood.' Woman enters spheres of sensation, perception, emotion, desire, knowledge, and experience, of an intensity and of a kind which man cannot know. Her individualities and peculiarities are fostered by education and by social custom—whether false and artificial or not is of no consequence here; and the result is a feminine type radically different from the masculine type, which demands special consideration in the study and treatment of non-conformity to law."¹⁶⁸

It is sadly ironic that the court's opinion was largely devoted to praise of indeterminate sentencing as an example of the scientific foundation and humane approach of "the new penology." In retrospect, the court's touching faith in the rehabilitative capabilities of prisons seems naive at best.

Statutes of this sort apparently were not successfully challenged until 1968.¹⁶⁹ In that year several courts, both state and federal, concluded that such discrimination violated equal protection. The first such case was *United States ex rel. Robinson v. York*,¹⁷⁰ a federal habeas corpus proceeding. In this case, the effect of the Connecticut statute was to require an indeterminate (maximum three years) sentence for petitioner, even though a male convicted of the same offense would receive at most a total sentence of eighteen months. In addition to the disparity between fixed and indeterminate sentences, the case thus raised an issue not presented in *Heitman*: a longer maximum sentence for the female. Citing *Loving v. Virginia*¹⁷¹ for the proposition that equal protection requires any racial classification to be subjected to the "most rigid scrutiny," the *Robinson* court held that sex discrimination should bear the same heavy burden of justification:

"While the Supreme Court has not explicitly determined whether equal protection rights of women should be tested by this rigid standard, it is difficult to find any reason why adult women, as one of the specific groups that compose humanity should have a lesser measure of protection than a racial group."¹⁷²

Tested by this standard, the statute was found wanting. Suggesting that imprisonment is still imprisonment, whatever euphemisms may be employed to describe it, the court was unable to discern any reason sufficient to justify the difference in treatment:

"It may be granted that a broad discretion should be given to the courts in order that the punishment imposed should bear a proper relation to the enormity of the offense. But the circumstances which may affect the sentences must be circumstances

connected with the crime. That there are differences between men and women cannot be denied, but that these differences justify a longer imprisonment of women cannot be sustained. There is no connection whatsoever between a breach of peace or resistance to arrest and being a woman. Those misdemeanors may be committed by persons of either sex."¹⁷³

The principle announced in *Robinson* has since been applied in two other Connecticut cases: once again in a federal district court,¹⁷⁴ and once in the Superior Court of Connecticut.¹⁷⁵

In *Commonwealth v. Daniel*,¹⁷⁶ the Pennsylvania Supreme Court reached a similar result. The statute in that case did not prescribe for women a sentence longer than the maximum for men, but, like the Kansas statute attacked in *Heitman*, it did deprive the court of the power to impose upon females a fixed sentence shorter than the statutory maximum. The *Daniel* opinion fell short of articulating the "rigid scrutiny" test employed in *Robinson*; on the contrary, it stated that a "strong presumption of Constitutionality"¹⁷⁷ attaches to every statute. Nevertheless the court concluded:

"[W]e fail to discern any reasonable and justifiable differences . . . between men and women which would justify a man being eligible for a shorter maximum prison sentence than a woman for the commission of the same crime, especially if there is no material difference in their records and the relevant circumstances."¹⁷⁸

This opinion supports our contention that not only are many forms of sex discrimination vulnerable when subjected to "rigid scrutiny," but they cannot even survive a serious application of the "rational basis" test.¹⁷⁹

In light of the consistent holdings in these recent cases, *Wark v. State*¹⁸⁰ is a disagreeable surprise. For escaping from a Maine prison farm, the defendant had been sentenced to an additional term of six to twelve years. He contended (and the Supreme Judicial Court of Maine assumed) that a female convicted of escaping from the women's reformatory would have been subject to a maximum sentence of no more than eleven months. Appellant therefore argued that his sentence constituted a denial of equal protection. The court distinguished the recent sentencing cases on the ground that they involved sex discrimination justified only by considerations of rehabilitation and "reform." Maine's statute, said the court, was enacted for a different reason: deterrence of a particular offense. With respect to escape, the court felt, the "distinctive attributes of the sexes" were both "relevant" and "controlling":¹⁸¹

"The Legislature could on the basis of long experience conclude that women, even those sentenced to the State Prison for serious offenses, tend for the most part to be more amenable to discipline and custodial regulation than their male counterparts and can therefore be effectively confined in an institution which lacks the high walls, armed guards and security precautions of a prison. By the same token the Legislature could reasonably conclude that the greater physical strength, aggressiveness and disposition toward violent action so frequently displayed by a male prisoner bent on escape from a maximum security institution presents a far greater risk of harm to prison guards and personnel and to the public than is the case when escape is undertaken by a woman confined in an institution designed primarily for reform and rehabilitation. Viewing statutory provisions for punishment as in part a deterrent to criminal conduct, the Legislature could logically and reasonably conclude that a more severe penalty should be imposed upon a male prisoner escaping from the State Prison than upon a woman confined at the 'Reformatory' while serving a State Prison

sentence who escapes from that institution. We conclude that a classification based on sex under these circumstances is neither arbitrary nor unreasonable but is a proper exercise of legislative discretion which in no way violates the constitutional right to equal protection of the law."¹⁸²

One indication of the tenacity of sex stereotyping is the fact that an opinion like that in *Wark* will so often seem sensible on first reading—at least to a male reader. After all, men are bigger and stronger on the average than women; if we were prison guards, we would probably be more afraid of an escaping male prisoner than a female. Isn't the court's reasoning therefore correct?

The trouble with the court's approach is that, in its preoccupation with group characteristics, it ignores the fact that the law punishes individuals. Again, the best way to illustrate the defect in this approach may be by analogy. For instance, suppose it could be demonstrated that persons of one race do commit a particular crime more frequently (in proportion to their numbers) than persons of other races. Could the state constitutionally prescribe a higher sentence for persons of that race who commit that crime, on the sole ground that this would constitute a greater deterrent to those who most need to be deterred? The answer—even if one did not agree with it—is clear. Can similar sex discrimination be any more justifiable?

Of course, it might be argued that the *Wark* court was speaking not only of propensity to commit the crime, but also of ability to commit it. Men are, by and large, bigger and stronger than women; not only may they be more likely to try to escape, they could be more likely to succeed. Is it not then proper for the state to consider this factor in fashioning a sentencing statute aimed at deterrence?

Since it is awkward to pursue a racial analogy at this point (it being virtually impossible for the writers to imagine any crime which members of one race have more ability to commit),¹⁸³ let us use another physical characteristic which, like sex and race, is not the result of individual choice: the ability to see. It seems perfectly plausible to assume that sighted persons are more capable than blind persons of committing virtually any crime. Would a statute be valid which provided that for any blind adult convicted of a felony, the penalty should be reduced by one-half?

If such a statute would be held to violate equal protection, the statute in *Wark* should clearly fare no better. Even if the hypothetical statute could be upheld, however, the *Wark* statute is still deficient by comparison. It distinguishes between defendants not on the basis of their individual characteristics, but solely on the basis of the extent to which two groups differ in average size and strength—differences which may not at all apply to particular individuals within either group.

In support of the *Wark* result, it might further be argued that men may properly be confined in separate institutions, made more "escapeproof" than those for women. This point may be well-taken,¹⁸⁴ even so, it does not necessarily follow that a higher sentence is in order for the crime of escape by a male, since, as the *Wark* court recognized, the sentence is properly to be regarded as "punishment," even though it may have a deterrent effect. It might well be argued that a defendant cannot properly be punished in part simply for being a male. Nor, even if all males were bigger, stronger and more aggressive than all females, is the statute necessarily justifiable by analogy to criminal statutes which punish an offense more harshly when accompanied by a greater threat of harm, e.g., "armed robbery." In those cases, the offender may be influenced in his choice of weapons by the varying

punishments held out. The male does not choose his sex, however; in our view, he therefore cannot appropriately be punished for it.

G. Consortium

The concept of "consortium" combines two disparate elements: (1) companionship and affection (including sexual relations) between spouses, and (2) the right of one spouse to the services of the other spouse.¹⁵³ It will come as no surprise to the reader that originally both of these elements were obligations owed by wives to their husbands, but not vice versa. The underlying assumptions about sex roles are by now all too familiar:

"But the right of consortium was by no means fully expressed [at common law] in the terms of society, companionship, and conjugal affection. The right to service was a prominent factor in it, and in respect to certain kinds of injuries, without doubt, the predominant factor. If we go back to the times when it took on its meaning the conditions were that the wife was socially and legally regarded as the husband's inferior, as having her existence merged into that of her husband, and as owing to him the duty, which he was entitled to command, of serving and administering to him in all the relations of domestic life. Her emancipation of recent years was centuries in the future. She was looked upon as the servant of and ministrant to her liege lord, to whom and to whose interests she was, by virtue of her marriage vow, devoted. He was entitled to her services, and these she was expected to render in the care of his home, in the rearing of his children, and in attending upon his wants."¹⁵⁴

Since wifely services could easily be equated with those of any servant, legal liability for interference with the master-servant relationship was easily extended to cases of injury to the husband-wife relationship.¹⁵⁷ Eventually, loss of consortium became recognized as a material element of damage in four types of actions by husbands against third parties: (1) criminal conversation, (2) alienation of affection, (3) malicious interference with the marital relationship and (4) negligent personal injury to the wife, resulting in loss of her services.

While corresponding recovery was available to wives in actions of the first three types, it was not in the fourth. Four primary reasons were advanced to justify this dichotomy.¹⁵⁸ By 1950, courts in at least eighteen jurisdictions had accepted these arguments,¹⁵⁹ with no clear holdings to the contrary.¹⁶⁰ Notwithstanding this overwhelming support for the no-recovery rule, each of the four assigned justifications is questionable.

The first is that a wife had no common law right to maintain an action in her own name. This argument is of little or no weight now that such disabilities have been removed; at any rate, it hardly justifies denial of a cause of action for only one of the four types of injury to the marital relationship.

The second argument is that, in the first three types of action, the wife's injury is "direct," but in the fourth it is merely "consequential." Even if this distinction does have some validity however, it affords no apparent justification for applying this limitation to wives but not to husbands.

A third rationale advanced in favor of the no-recovery rule is that a wife has no right to the services of her husband, as contrasted with his companionship, affection, etc. This argument depends on the premise that the only element of recovery in the wife's consortium action would be loss of services. This premise appears unjustified, however, since the husband's recovery for loss of consortium has always included damages for loss of conjugal relation as well as loss of service.¹⁶¹ Moreover, even if loss of services were the

only element of recovery, the wife might nevertheless be entitled to a cause of action by virtue of the Married Women's Acts. These acts removed many disabilities formerly imposed upon married women, and they could have been interpreted as giving the wife a reciprocal right to her husband's services. But they were not.¹⁶²

The fourth reason for denying the wife's recovery for loss of consortium is that the husband in his own action against the tortfeasor can recover for impairment of his ability to provide support. Permitting the wife to sue the same defendant for loss of her husband's services would therefore result in double recovery. Since husbands do have a duty to support their wives, it must be conceded that this rationale has some validity, and recent opinions have treated it as the determinative issue in evaluating the no-recovery rule.

The leading authority for rejection of the no-recovery rule on nonconstitutional grounds is *Hitafer v. Argonne Co.*¹⁶³ In this case of first impression, the court carefully considered the principal justifications for the rule, and found each of them insufficient. The court answered the double recovery argument by asserting that it would be a simple matter to deduct from the wife's damages any amount recoverable by the husband for impairment of support.¹⁶⁴ Rejecting the unbroken succession of contrary precedent in other jurisdictions as based on "specious and fallacious reasoning," the court then adopted for the District of Columbia a rule allowing the wife to recover.¹⁶⁵

In the twenty-one years since *Hitafer*, a number of courts have been called upon to reconsider the wisdom of continued adherence to the no-recovery rule. Although the decisions have been divided, *Hitafer* has attracted a considerable following.¹⁶⁶ Indeed, very recent cases indicate a clear trend in favor of permitting recovery.¹⁶⁷ In this area at least, the courts appear to be awakening to the fact that rules of law based upon outmoded concepts of uxorial status do not deserve contemporary reaffirmation.

In jurisdictions where the courts have refused to abandon the no-recovery rule, it is not surprising that equal protection claims have been raised. In two recent diversity cases, federal district courts in Michigan and Illinois were required to apply Indiana law in determining whether a wife could recover for loss of consortium. Since Indiana precedent at the time was clearly against recovery,¹⁶⁸ the only question was whether such a rule contravened the fourteenth amendment. In one case,¹⁶⁹ the opinion simply announced the court's conclusion that the Indiana rule violated equal protection. In *Karczewski v. Baltimore & Ohio Railroad*,²⁰⁰ however, a similar conclusion was reached only after a carefully stated analysis of the problem. After reviewing the standard arguments against recovery, the court rejected them as unconvincing:

"[T]hat women cannot sue for loss of consortium is not excusable because based upon an historical legal doctrine which viewed a woman as her husband's chattel or 'servant.' Some positive justification is required. Nothing persuasive is offered by any of the cases which deny her this right.

"Marriage is no longer viewed as a 'master-servant' relationship. It has assumed a special status in which each party has equal rights under the law."²⁰¹

Concluding that there was in fact no rational basis for the no-recovery rule, the court then held it to be a violation of equal protection.²⁰²

Slightly more than a year later, however, *Karczewski* was in effect overruled by the Seventh Circuit Court of Appeals in *Miskunas v. Union Carbide Corp.*²⁰³ In that case, the Indiana no-recovery rule was again contested on equal protection grounds. The only rational basis that the court could discover for the Indiana rule was the avoidance of

double recovery. But that, it felt, was sufficient:

"Because a husband can recover for lost earnings, Indiana could reasonably conclude that it would be undesirable to give the wife an action that might permit double recovery. Since 87.8% of married men are employed and only 34.4% of wives are employed, Indiana could justifiably discriminate in this respect between the spouses. Indiana could infer that more often in a wife's suit than a husband's the jury would award her duplicating damages for some of the same elements of injury."²⁰⁴

At first glance, the employment statistics relied upon by the court seem to support its conclusion that there is a rational basis for the no-recovery rule, since they do demonstrate that the great majority of actions by wives will involve the possibility of double recovery. On closer examination, however, the figures reveal that, for 12% of the wives, an action for loss of consortium could not possibly result in double recovery. The arbitrariness of the no-recovery rule is demonstrated by the unfairness of its application to these wives. If the double-recovery problem is sufficiently acute to warrant an exclusionary rule at all, using the plaintiff's sex as the basis for exclusion seems questionable. It would be much fairer (and would impose no special burden on the courts) to entertain the wife's cause of action at least in every case where the husband was unemployed at the time of injury.

The consortium cases reflect a variety of ways in which sexist patterns of thought retain their influence over rules of law. In its inception, the rule granting only the husband an action for loss of consortium was blatantly male-supremacist: At common law, wives could be analogized to servants; a husband could therefore claim the benefit of the established cause of action for loss of the services of a negligently injured servant. Today, of course, no course could seriously declare that a husband is the "master" of his wife and that he is entitled to her services, companionship and sexual attentions without incurring any reciprocal obligations. Where the no-recovery rule survives, its principal justification is now the fear of double recovery—seemingly more a rationalization than a reason.

Although not stressed in judicial opinions, there may be another reason why the no-recovery rule is still adhered to. There is ample evidence that American courts have been reluctant to extend tort liability for purely "emotional" injury—largely because of their apprehension that indulgent juries will award excessive damages, given the intangible nature of such an injury and the ease with which it can be feigned. Thus, negligent infliction of mental suffering has only recently received wide recognition as a compensable wrong.²⁰⁵ The principal element in a wife's consortium recovery is apt to be the loss of her husband's companionship and affection; it would hardly be surprising if many courts regard this as an essentially "psychological" injury, requiring similar caution.

If this hypothesis is valid, then judicial retention of the no-recovery rule is understandable, but hardly commendable. Even if the fear of unjustified recoveries does furnish sufficient reason for a rule of exclusion, it surely does not require the perpetuation of irrational distinctions based on sex alone. Whatever the rule, it should be the same for both sexes; both should be permitted to recover, or neither.

H. Conclusions from the cases

Although the above cases deal with sex discrimination in a wide variety of activities, they by no means exhaust the examples which might be shown. We believe they are sufficient, however, to demonstrate the following general propositions:

(1) Despite the enactment of various laws

Footnotes at end of article.

designed to improve the position of women, male-dominated legislatures and courts have historically exhibited the belief that women generally are—and ought to be—confined to the social roles of homemaker, wife and mother, and gainfully employed (if at all) only in endeavors which comport with their assumed subservient, child-oriented and decorative characteristics;

(2) A small but significant number of courts has recently perceived that some legislation mandating sex discrimination presents substantial constitutional questions, and several such laws have been struck down on equal protection grounds;

(3) Despite such holdings by a number of state and lower federal courts, opinions continue to appear in which both the result and the reasoning are virtually indistinguishable from those issued nearly a century ago. In the absence of a definite shift of position on the part of the Supreme Court, and in the face of continued adherence by many state and federal courts to traditional sexist attitudes, it is far too soon to assert that a clear trend toward judicial recognition of women's rights has developed.²⁰⁰

III. SEX AND RACE

In nearly every section of this study, we have advanced the analogy of racial discrimination in order to clarify and strengthen our arguments that various forms of sex discrimination constitute a denial of equal protection. Although we elected to postpone discussion of the general aptness of the analogy between race and sex, we are of course aware that the reader may not be ready to concede the validity of any argument based primarily on such an analogy. We are convinced, however, that each example we have suggested is appropriate and that all of them can be justified by the same general considerations.

Analytically, state-enforced sex discrimination is virtually identical to racial discrimination in at least three significant ways: (1) each reflects a group stereotype based on imputed characteristics which, if not purely imaginary, are nonetheless inapplicable to many individual members of the group; (2) each provides governmental endorsement for the opinion privately held by members of a dominant group that, due to the supposed existence of these characteristics, each member of the subordinate group is inherently inferior; and (3) proceeding from the assumption that the stereotypes are accurate, each attempts to confirm and perpetuate the existence of the supposed characteristics by requiring every citizen to conform to a variety of rules, all of which reflect the belief that one group is in fact inferior to another.

The falsity of certain racial stereotypes, notably with respect to blacks and American Indians, has become widely recognized in recent years. That the female stereotype is also untrue (and even a bit foolish) has been convincingly argued by many, but the myth of female inferiority stubbornly persists—even among supposedly enlightened judges. The preceding sections document the consistency with which our (overwhelmingly male) judiciary has supported enactments of our (predominately male) state legislatures that require women to conform to the expectations of the dominant group. In addition, the case law clearly shows that women have been denied equal treatment in employment, public education, places of public accommodation and—shamefully—in those supposed bastions of “equal justice,” the criminal and civil courts. In all of these respects, contemporary sex discrimination closely resembles the pre-Brown pattern of racial discrimination by law.

As bases for classification, sex and race share three important similarities: (1) by and large, members of the subordinate group

are readily identifiable; (2) membership in the “inferior” group is initially nonvolitional; and (3) once acquired, this membership cannot be renounced. (Particularly in the last respect, race and sex discrimination are of a different order from discrimination against the poor or the young; members of these latter groups are not inevitably trapped for life in a subordinate status.) It is repugnant to the most rudimentary sense of fairness that a person should be officially relegated to an inferior status, severely limiting his opportunities for self-expression and achievement, solely because of an accident of birth. Stripped to its essentials, this is precisely the effect of racial and sex discrimination.

Belatedly, whites are starting to comprehend the enormity of the injustice perpetrated upon nonwhites in America. White males, on the other hand, have hardly begun to recognize that the society we control has visited exactly the same type of injustice upon nonmales—though admittedly with less heinous consequences. Notwithstanding the fact that a far greater degree of visible harm has been suffered by nonwhites than by females, a general pattern of economic and political disadvantage is easily demonstrable in both cases.

In terms of other, less obvious effects upon individual members of the subordinate group, sex and race discrimination are again distressingly similar. When it enforces either kind of discrimination with a broad range of sanctions, the state encourages its citizens to relate to each other according to group stereotypes, rather than as individuals. This is dehumanizing—for the dominant group as well as the subordinate. But the effect on the “inferior” individuals is particularly unfortunate: constant subjection to pervasive reinforcement of group stereotypes tends to influence—to distort—their perception of themselves. As one recent commentator put it:

“Lowered cultural expectations of success and higher expectations of failure result in a self-fulfilling prophecy: From those of whom little is expected little is achieved. These patterns of discouragement, the perpetuation in our education processes of women as “helpmate,” the absence of “appropriateness,” all these handicaps to women in our society are key factors in a woman's choosing to be a nurse rather than a doctor, a law secretary rather than a lawyer, a researcher rather than a writer, a teacher rather than a practitioner.”²⁰¹

At best, these effects of racial and sex discrimination are wasteful of invaluable human resources; at worst, they are damaging and degrading to the individuals affected.

In light of all these similarities between the operation and effects of both types of state-imposed discrimination in education, employment and the judicial process, we believe it entirely appropriate to use racial analogies to assist in the resolution of cases involving the rights of women. Indeed, we would contend that, at least with respect to the areas surveyed above, both types of discrimination should be subjected to the identical equal protection standard.

True, there may be areas of state regulation where the analogy between sex and race should not be employed—where certain types of sex discrimination should be recognized as valid although corresponding racial discrimination would not be. Several areas of law not discussed above quite explicitly distinguish between the sexes, and often operate upon them unequally. One obvious example is the regulation of sexual activity by criminal statutes that punish one sex exclusively or more severely than the other; another is the regulation of family relationships by statutes—such as those relating to marriage and divorce, abortion and sterilization, child custody and support, etc.—that in many ways define the rights and duties of the marital partners differently according to their

sex. There are those who feel that all laws governing sexual conduct and familial relationships are in need of drastic overhauling, so as to make them completely neutral between the sexes. On the other hand, many would argue that there are basic societal interests in these areas which might be threatened by such a readjustment.

One need not hold any particular opinion about society's regulation of sexual activity and marriage, however, in order to respond to the issues of equal protection arising in education, employment, and the judicial process. On the contrary, the argument for sex equality in these areas is made even more compelling by the fact that the sexual discriminations there involved have nothing whatever to do with sexual activity or inherent sex differences. This is not to deny that equal protection issues may be raised by laws regulating sexual conduct or familial relationships; it is simply to suggest that such issues should be all the more visible in the many cases where sex differences or sexual activity are not directly involved.

IV. JUDICIAL ATTITUDES TOWARD SEX DISCRIMINATION CASES

Despite the strong argument that sex discrimination has much the same destructive potential as race discrimination, it is nevertheless undeniable that American judges have responded more readily to claims of injury from the latter. It is possible, of course, that this merely establishes that sex discrimination is not inherently harmful—thereby disproving our thesis. It is also possible, however, that there are reasons why male American judges should have difficulty in perceiving its harmful effects. We should like to offer our intuitive suggestions as to what some of these reasons may be. We believe that what follows is to a great extent applicable to all males, although our primary concern is with the extent to which it may be true of judges in particular.

The failure of any male to perceive the harmful potential of various sexually discriminatory laws and practices can perhaps be initially ascribed simply to a lack of knowledge. This is particularly true in contrast with race discrimination. For at least the past ten years, the white public has been exposed to a rather steady and wide-ranging stream of information about the effects of one hundred years of segregation and discrimination on the black citizens of America. Only recently, however, has the public begun to be aware of the injurious effects of sex discrimination. It is the responsibility of counsel, of course, to educate the judge about the facts of any lawsuit, and in a case involving sex discrimination, this includes helping him to understand in what respects the practice complained of is harmful to those affected.

Like most other men, male judges suffer from an additional handicap in comprehending the effects of sex discrimination. With respect to race, it is likely that the white judge has close personal association with few if any black persons; although his information about the harms of race discrimination may therefore be secondhand, it nevertheless may have considerable validity for the black population in general. Virtually every judge, however, is in daily contact with one or more women on a close personal basis—a wife, a daughter, a mother, a sister, or one or more office employees. If the women with whom he is associated are all apparently happy and satisfied, he is likely to conclude from this that all “sensible” women are content with their lot. In this respect, judges—like the authors of law review articles—must be alert to the dangers in overgeneralizing from their personal experience.

Even assuming that a judge does understand the effects of sex discrimination, he may nevertheless be deterred from granting relief in a particular case because of personal attitudes of which he is not even aware.

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There are a number of emotional responses to "women's liberation" which it seems to us are shared by many men, including some judges. One of these, the fear of competition from individual women, is probably not present in the judge's case; judges, by and large, hold positions where women are no particular danger to either job retention or possible promotion. This may of course change in another generation, as the proportion of female law graduates rapidly increases, but for the present generation of judges, women probably pose little or no threat of personal competition.

In a more abstract way, however, competition from women as a group may indeed seem to threaten the judge's interests. Most judges hold their offices at least in part because of past activity in a political organization under predominately masculine control. Although there are of course able and successful female practitioners of the art of politics, they remain exceptions proving the rule that politics, like most exercises of power, is still a "man's game." Any change in the respective roles of the sexes which militates against such masculine domination—even if only in an insubstantial, largely symbolic way (as for example the question of whether women should serve on juries)—may stir uneasiness in the heart of one amply rewarded by, and comfortable with, the political status quo.

Fear of economic or political competition even if wholly subconscious, is of course an obvious reason why one might be moved to support discriminatory practices. There are, however, other emotions which may influence any male judge's response to a suit involving sex discrimination. All lawyers know that the "law" as represented by the results of litigated cases is as much the product of the court's evaluation of the "morality" of the parties' behavior and the "fairness" of the possible decisions as it is of any set of abstract rules. One way in which a good judge will utilize his emotional responses in partnership with his intellect is by engaging in a process of *empathy*—attempting to perceive the case before him as it is viewed by the parties themselves. Olympian detachment is indeed the best posture from which to render final decision, but it should be assumed only after the judge has first exercised his ability to empathize with the parties to the lawsuit.

Faced with a black man's complaint of racial discrimination, a white judge may well do at least a passable job of empathizing with the plaintiff—of temporarily imagining himself to be black-skinned. This will of course vary with the judge's own conditioning on the matter of race. For a judge taught from birth to regard every black person as a subhuman creature, empathizing with a black man is as inconceivable as empathizing with an eagle or a Labrador retriever. The judge not so severely handicapped, however, will be able to imagine how it would feel to be on the receiving end of such discriminatory treatment. From this perspective, the judge's answer to the hypothetical question "How would I feel if someone did that to me" is likely to be "Furious!"—because if there is *anyone* unaccustomed to being treated as inferior or subordinate, it is a white male American judge. Having subjected himself, even if fleetingly, to what he imagines to be the plaintiff's mental tribulations, the judge is better equipped to test the parties' competing claims against an abstract principle of law.

Where sex discrimination is alleged, however, most male judges are likely to have considerable difficulty empathizing with a female complainant. Even before the typical American child first become aware of sex differences, he (or she) is conditioned to conform to the social role expected of his sex—which interests he should pursue (and which to shun), which occupations he

should consider (and which to ignore), how he should talk, walk, think and *feel*. And one of the very worst things he can do, in society's eyes, is to express a desire to be—or to behave as though he were—a member of the other sex. Although there is some evidence that preoccupation with secondary sex differences may be declining, for the present generation of judges it may be easier to assume the imagined mental state of a black male, of whatever station in life, than it is successfully to imagine that one is a *female* (even a white, middle-class one). The wonder is not that some judges display insensitivity toward the sexist features of our society but rather than an increasing number of judges are apparently able to break through the strictures of their own conditioning.

An even more deeply rooted emotion which judges share with most of mankind is a general hostility to change—especially change of such a fundamental and far-reaching character as to transform radically the basic institutions of society. Although complaints about sex discrimination may focus on particular practices, the whole battery of "women's liberation" goals seems to some (both men and women) to portend a future society in which the roles of men and women as members of a family unit would be so different from those of today as to make it almost unrecognizable. Perhaps children would not be raised by their parents at all; perhaps marriage as we know it would disappear completely; perhaps the concept of "family" would mean something completely different—or nothing at all. To many white southerners of twenty years ago, the end of racial segregation seemed to spell the end of civilization. For the elderly or even middle-aged person today, any prospect of a basic change in the family structure of society as he has known it may seem equally disquieting. Even the most modest demand for equality, if perceived as the spearhead of a wide-ranging assault on the social order, may thus be viewed as a threat. But the reconciliation of stability and change is the essence of the judicial function; judges are therefore required to transcend their natural aversion to change—to join in shaping the course of social evolution, rather than adamantly opposing it.

If the above analysis has any validity, it follows that male judges are likely to decide issues of sex discrimination from a narrow perspective and under certain psychological handicaps. Are any countermeasures available to them?

First, the judge can avoid the temptation to dismiss summarily any claim of impermissible sex discrimination as "lacking in substance." The fact that a particular statute or practice has received general acquiescence for many years from both males and females should not foreclose judicial consideration of its constitutionality. (Here again, race discrimination furnishes an instructive parallel.)

The next suggestion is implicit in what has been said earlier about the process of judicial empathy. The judge must make a conscious effort to educate himself as to the effect of the statute or practice in question, from the point of view of the different types of women it affects. If the statute is one which prohibits all women from engaging in a certain occupation, for instance, he cannot be content with merely considering whether he, a mature male, is inclined to think that women generally ought not to engage in the proscribed activity (much less whether he thinks his own wife or daughter should do so). Rather, he must consider how a variety of women—single women as well as married, older women as well as young, black women and white, those with much education and those with little, those with children and those with none—are affected.

Further questions should be explored: Do the reasons advanced to support the discrimination in question apply only to *some* women? To *some men*, as well? Does it represent an expression of the stereotype of woman as a homebody, fit only for domestic labor? Or as some sort of harlot, wantonly corrupting innocent men? Does it appear to represent a conclusion that some portion of the community's affairs are—and should continue to be—run completely or primarily by men? That some kinds of decisions are better left to men? If the answer to some of these questions is yes, we would suggest that a prima facie case has been made against the validity of the statute or practice in question, as a denial of equal protection.

If the judge has reached this conclusion, then the next question is whether there is a basis for the legislature's action sufficient to overcome the initial finding that improper class legislation may be involved. We have earlier suggested that a classification based on sex is one which demands "scrutiny" as "strict" as any other, including race. If the reader disagrees, he will probably concede that there must at least be a "rational basis" for the discrimination. How does the judge ascertain whether such a "rational basis" exists?

It is perhaps more appropriate to suggest what the judge should *not* do in this regard. One suggestion would be to avoid merely concluding (as some judges apparently do) that the legislature must have had *some* reason, and whatever it was, it is good enough. Certainly a presumption of validity attaches to any legislative act, but when that presumption has been overcome by a showing of unequal treatment, it should be incumbent on the proponent of the act to demonstrate what its purpose was and why that purpose justifies treating the sexes in an unequal manner.

A second response to avoid is acquiescence in discrimination merely on the ground that it may obviate some degree of expense or inconvenience. An easy example is the jury statute considered in the *Hoyt* case, which was supported by the argument that calling only female volunteers would avoid the inconvenience occasioned by calling women who would then claim exemption. Another might be the claim of an educational institution that requiring it to admit females would entail the burden of providing them with restroom and other facilities not currently available. In our view, a state's policy of discrimination is not justifiable merely because it is more convenient or less expensive than a nondiscriminatory policy. It would be cheaper and more convenient to choose our President only from the citizens of one particular state, to have only citizens of that state elect him and to elect a new one only when the incumbent dies or retires. It would also be cheaper and quicker to do away with trial by jury in criminal cases. There are competing interests in both cases, however, which are stronger than the mere desire for efficiency and economy. The policy against sex discrimination should also be strong enough to prevail in such a competition. While efficiency and economy are in general "rational bases" for legislation, they do not justify discrimination against individuals on the basis of inborn characteristics which they are powerless to alter.

V. CONCLUSION

Having presented the results of our legal research, as well as our own intuitive hypotheses about judicial attitudes in sex discrimination cases, we would add only one item to a presentation perhaps already overlong. Freely conceding as we do that male judges are not unique in manifesting sexist habits of thought but rather share them with most other males (even law professors, ourselves included), have we any justification for singling out the judiciary for special criticism?

The judge in American society occupies a position of unique esteem in the eyes of his fellow citizens. In return for this particular honor, the judge assumes a special burden of personal responsibility for the fairness, objectivity and disinterestedness of his approach to the legal issues presented to him for resolution. This duty requires him, insofar as he is humanly able, to perform his judicial functions without yielding to the many prejudices and superstitions that influence other men in every aspect of their daily lives. Just as the policeman's special role entitles society to expect him not to react violently to taunts or epithets that would incite most men to action, so the judge can fairly be expected to free himself as nearly as possible from the limitations of his personal attitudes about sex roles in cases involving constitutional challenges to sex discrimination. The judicial role must transcend social conditioning in such matters; in this respect, the judge must be *above* other men.

Another aspect of the judicial role is the responsibility to be *ahead* of other men. Judges are not entitled to the luxury of shielding themselves behind public opinion or community attitudes, however strongly held those may be. The judiciary thus cannot shift responsibility to the legislatures, the press, women's liberation activists or anyone else. Nor can it postpone affirmative action until public opinion is overwhelmingly convinced that the time is appropriate. A judge whose opinions on important questions of public policy reflect nothing more than his private estimate of public majority opinion is engaging in journalism, not jurisprudence.

Our study has convinced us that, to date, most male American judges faced with issues of sex discrimination have not adequately met these special responsibilities. There are, however, some encouraging signs of progress. It is our hope that this study will contribute to an increasing judicial understanding of and sensitivity toward the serious constitutional issues raised by state laws that discriminate against individuals solely on the basis of their sex.

FOOTNOTES

*Professors of Law, New York University School of Law. The authors gratefully acknowledge the assistance of four New York University law students, Messrs. Douglas Behr, Lawrence Vaughan, Darman Wing and Richard Wolf, each of whom performed research which is reflected in the discussion that follows.

¹Professor Knapp was a member of the Committee on Federal Legislation of the Association of the Bar of the City of New York, which studied proposed constitutional amendments designed to redress discrimination on the basis of sex. The committee's findings appear in Report, Amending the Constitution to Prohibit State Discrimination Based on Sex, 26 Record of N.Y.C.B.A. 77 (1971).

²"Sex discrimination" can be used in a generic sense, connoting differing treatment of individuals solely on the basis of their sex. It can also be used in a pejorative sense to denote those situations in which inequality of treatment is designed to benefit one sex to the detriment of the other. Except where the context indicates otherwise, we will use the term in the former sense.

³Some of the most valuable references are: L. Kanowitz, *Women and the Law* (1969); Crozier, *Constitutionality of Discrimination Based on Sex*, 15 B.U.L. Rev. 723 (1935); Murray & Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 Geo. Wash. L. Rev. 232 (1965); Note, *Sex Discrimination and Equal Protection: Do We Need A Constitutional Amendment?*, 84 Harv. L. Rev. 1499 (1971); *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Harv.

L. Rev. 1109 (1971); Note, *Sex Discrimination and the Constitution*, 2 Stan. L. Rev. 691 (1950). Also of interest is Brown, Emerson, Falk and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871 (1971), which appeared as this article was going to press.

⁴For a recent exchange of views on the subject by eminent constitutional lawyers, see Symposium, *Equal Rights for Women: A Symposium on the Proposed Constitutional Amendment*, 6 Harv. Civ. Rights-Civ. Lib. L. Rev. 215 (1971). See also Brown, Emerson, Falk and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, supra note 3.

⁵A March 1970 memorandum of the Citizens' Advisory Council on the Status of Women lists 15 specific areas of sex discrimination:

1. State laws placing special restrictions on women with respect to hours of work and weightlifting on the job;
2. State laws prohibiting women from working in certain occupations;
3. Laws or practices operating to exclude women from State colleges and universities (including higher standards required for women applicants to institutions of higher learning and in the administration of scholarship programs);
4. Discrimination in employment by State and local governments;
5. Dual pay schedules for men and women public school teachers;
6. State laws providing for alimony to be awarded, under certain circumstances, to ex-wives but not to ex-husbands;
7. State laws placing special restrictions on the legal capacity of married women or on their right to establish a legal domicile;
8. State laws that require married women but not married men to go through a formal procedure and obtain court approval before they may engage in an independent business;
9. Social Security and other social benefits legislation which give greater benefits to one sex than to the other;
10. Discriminatory preferences, based on sex, in child custody cases;
11. State laws providing that the *father* is the natural guardian of the minor children;
12. Different ages for males and females in (a) child labor laws, (b) age for marriage, (c) cutoff of the right to parental support, and (d) juvenile court jurisdiction;
13. Exclusion of women from the requirements of the Military Selective Service Act of 1967;
14. Special sex-based exemptions for women in selection of State juries;
15. Heavier criminal penalties for female offenders than for male offenders committing the same crime.

CONGRESSIONAL RECORD, vol. 116, pt. 7, p. 9684. We shall treat in some detail the first three and the last two items on this list. In addition, we will discuss discrimination in places of public accommodation and with respect to recovery for loss of consortium.

⁶83 U.S. (16 Wall.) 130 (1873).

⁷Id. at 132.

⁸83 U.S. (16 Wall.) 36 (1873).

⁹We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this [equal protection] provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.

Id. at 81.

¹⁰83 U.S. (16 Wall.) at 140-42.

¹¹154 U.S. 116 (1894).

¹²See *Konigsberg v. State Bar*, 353 U.S. 252, 262 (1957); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957).

¹³In 1949, then U.S. Supreme Court Asso-

ciate Justice Thomas C. Clark described women lawyers in the following words:

As lawyers they have demonstrated their ability in all phases of law. . . . Any debate as to their legal ability would be as obsolete as a discussion on the merits of Woman Suffrage. . . . [Y]ou can depend upon a woman lawyer for a careful painstaking legal job. . . . The legal profession has been immeasurably strengthened by the presence of women lawyers.

Tally, *Women Lawyers of Yesterday, Today, and Tomorrow*, 46 *Women Lawyers J.*, Summer, 1960, at 21, 23-24.

Women have proved themselves to be capable practitioners and have risen to important positions within the legal profession:

According to the United States Department of Labor, about 175 women were judges of Federal, State, County, and City courts in 1955. . . . This figure does not include women justices of the peace. In 1957 a woman was presiding judge of the Sixth Circuit . . . of the United States Court of Appeals, the highest judicial post ever held by a woman in the United States. Another woman was judge of the United States District Court, one of the fifteen judges for the District of Columbia. In California, a woman was, as of 1957, an associate Justice of the Tax Court of the United States and a woman was appointed a judge of the United States Customs Court in June, 1955, the second woman to hold this post. . . .

Harris, *Women and the Law*, 47 *Women Lawyers J.*, Winter, 1961, at 20, 21. Furthermore, the number of women sitting as judges has now risen to 200 and the number of female federal district judges has increased to three. There is still only one woman on the United States courts of appeals. *Sassower, Women in the Law: The Second Hundred Years*, 57 A.B.A.J. 329, 330-31 (1971). Nevertheless, the legal profession remains male dominated; women lawyers constitute only about 3% of the total. Moreover, this percentage has remained virtually constant over the past 20 years. The percentage from 1948 to 1966 rose only from 1.8 to 2.8%. The 1967 *Lawyer Statistical Report 15* (Well ed. 1968).

After admission to the bar, women encounter further discrimination. In a study of women lawyers, James J. White found on the basis of a questionnaire study that "males make a lot more money than do the females." White, *Women in the Law*, 65 Mich. L. Rev. 1051, 1057 (1967). Furthermore, the practices of women lawyers seem to be centered around certain areas: "The proportion of females engaged in trusts and estates (60%), domestic relations (50%) and tax (31%) [was] higher than the proportion of men engaged in these activities. These data accord with the commonly held beliefs about women's practice." Id. at 1062. See generally *Dinerman, Sex Discrimination in the Legal Profession*, 55 A.B.A.J. 951 (1969); *Sassower, Women in the Law: The Second Hundred Years*, 57 A.B.A.J. 329 (1971); *Testimony Submitted by the Women's Rights Comm. of N.Y.U. School of Law for Hearings Conducted by the House Subcomm. on Educ.*, 116 Cong. Rec. H7980 (daily ed. Aug. 10, 1970).

¹⁴The twenty-first amendment provides that "the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited." U.S. Const. amend. XXI, § 2. This amendment has been interpreted as relaxing the usual commerce clause limitations on state regulation of the liquor trade. *Hostetter v. Idlewild Liquor Corp.*, 377 U.S. 324, 330-31 (1964); *Carter v. Virginia*, 321 U.S. 131, 140 (1944) (Frankfurter, J., concurring); *Ziffirin, Inc. v. Reeves*, 308 U.S. 132, 137-38 (1939). The amendment does not, however, similarly relax the due process and equal protection guarantees of the fourteenth amendment. See *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35 (1966); *Parks v. Allen*, 409 F.2d 210 (5th

Cir. 1969); *Krauss v. Sacramento Inn*, 314 F. Supp. 171, 177-78 n.5 (E.D. Cal. 1970).

¹⁵ 335 U.S. 464 (1948).

¹⁶ Id. at 465-66.

¹⁷ The three-judge district court from which the appeal had been taken was no more enlightening in its discussion of the legislative intent, referring to a conceivable (but unspecified) "grave social problem" that could be created by female bartenders and to the likelihood that male owners would be motivated to maintain a "wholesome atmosphere" if their wives or daughters were tending bar. The statute was then categorized as a "special provision for the protection of women." *Goesaert v. Cleary*, 74 F. Supp. 735, 739 (E.D. Mich. 1947).

¹⁸ 335 U.S. at 466-67.

¹⁹ For a general discussion of the difference between the usual "reasonable classification" test of equal protection and the more strict "compelling state interest" test applied to certain "suspect" classifications, see Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065 (1969). For a recent illustration of the manner in which the determination of the applicable test may affect the result of a case, see *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971).

The Supreme Court has never held that sex discrimination is inherently suspect, nor has it ever invalidated such discrimination by applying the "reasonable classification" test. See note 206 infra.

²⁰ See, e.g., *City of Hoboken v. Goodman*, 68 N.J.L. 217, 51 A. 1092 (Sup. Ct. 1902): "The supposed evil aimed at is the employment of women in connection with a traffic likely to induce vice and immorality." Id. at 221, 51 A. at 1093. See also *State v. Considine*, 16 Wash. 358, 364, 47 P. 755, 757 (1897):

The legislature is the supreme authority, within constitutional limitations, to determine what is and what is not an immoral business or a nuisance, and when it has so determined, its enactment is valid unless the legislative act is clearly partial, arbitrary, and oppressive. The prohibition of employment of a female person in the statute under which defendant was convicted uniformly applies to all persons employing, and who are engaged in a like business with defendant, and extends to all female persons employed.

Fifty years later, the pattern remained the same. See, e.g., *Fitzpatrick v. Liquor Control Comm'n*, 316 Mich. 83, 105, 25 N.W.2d 118, 127 (1946): "The extent to which the legislature may be influenced by a newer conception . . . as to the rights of women in employment and in social life, and particularly to act as bartenders in licensed liquor establishments, is for the legislature, and it only, to decide."

²¹ *Brown v. Foley*, 158 Fla. 734, 29 So. 2d 870 (1947).

²² E.g., *Hargens v. Alcoholic Beverage Control Appeals Bd.*, 263 Cal. App. 2d 601, 69 Cal. Rptr. 868 (Ct. App. 1968); *State v. Burke*, 79 Idaho 205, 312 P. 2d 806 (1957).

²³ 57 N.J. 180, 270 A.2d 628 (1970).

²⁴ Id. at 186, 270 A.2d at 631.

²⁵ A similar technique was employed by the New Jersey courts to invalidate an ordinance prohibiting women from being served liquor at a bar unless seated. *Gallagher v. City of Bayonne*, 106 N.J. Super. 401, 256 A.2d 61 (Super. Ct. App. Div.), aff'd, 55 N.J. 153, 259 A.2d 912 (1969). See text accompanying notes 89-90 infra.

²⁶ This statute declared it a misdemeanor for a female to serve as a bartender and subjected both employer and employee to criminal sanctions. It also contained an exception for female owners of bars and wives of male owners. Cal. Bus. & Prof. Code § 25656 (West 1964).

²⁷ 485 P.2d 529, 95 Cal. Rptr. 329 (Sup. Ct. 1971).

²⁸ Cal. Labor Code §§ 1411-12 (West 1971).

²⁹ See, e.g., *Longacre v. State*, 448 P.2d 832 (Wyo. 1968).

³⁰ Civil Rights Act of 1964, §§ 701-16, 42 U.S.C. §§ 2000e-2000e-15 (1964). The effect of Title VII on state regulation of employment conditions is considered more fully in the next section.

³¹ Employers with fewer than 25 employees are exempt from Title VII. Id. § 701(b), 42 U.S.C. § 2000e(b) (1964). Apparently some, but not all, of the employers in *Sail'er Inn* were exempt on this ground. See 485 P.2d at 532 n.4, 95 Cal. Rptr. at 332 n.4.

³² See text accompanying notes 69-74 infra.

³³ Cal. Const. art. 20, § 18 (West 1954).

³⁴ *In re Maguire*, 57 Cal. 604, 608 (1881) (emphasis added).

³⁵ 485 P.2d at 533, 95 Cal. Rptr. at 333.

³⁶ Id. at 533-34, 95 Cal. Rptr. at 333-34.

³⁷ Id. at 534, 95 Cal. Rptr. at 334.

³⁸ Id.

³⁹ The court asserted that the clauses are substantially identical, citing *County of Los Angeles v. Southern Cal. Tel. Co.*, 32 Cal. 2d 378, 196 P.2d 773 (1948). 485 P.2d at 538 n.13, 95 Cal. Rptr. at 338 n.13.

⁴⁰ 485 P.2d at 539, 95 Cal. Rptr. at 339.

⁴¹ *Loving v. Virginia*, 388 U.S. 1 (1967); *McLanghin v. Florida*, 379 U.S. 184 (1964); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948); *Korematsu v. United States*, 323 U.S. 214 (1944); *Truax v. Raich*, 239 U.S. 33 (1915).

⁴² 485 P.2d at 540-41, 95 Cal. Rptr. at 340-41.

⁴³ Id. at 542, 95 Cal. Rptr. at 342.

⁴⁴ Id. at 542, 95 Cal. Rptr. at 342.

⁴⁵ Id. at 543, 95 Cal. Rptr. at 343.

⁴⁶ *United States ex rel. Robinson v. York*, 281 F. Supp. 8 (D. Conn. 1968). Cf. *White v. Crook*, 251 F. Supp. 401 (M.D. Ala. 1966); *Commonwealth v. Daniel*, 430 Pa. 642, 243 A.2d 400 (1968).

⁴⁷ The court distinguished *Goesaert* on the ground that the Michigan statute permitted women to tend bar only under circumstances where a close male relative was the actual owner of the bar and presumably could be expected to supervise the female bartender's activities. The California statute, on the other hand, contained an exception which allowed female owners to tend bar even in the absence of a male "protector." 485 P.2d 543, 95 Cal. Rptr. at 343. Thus *Goesaert's* protectionist rationale could not sustain the California statute.

⁴⁸ *Vintage Soc'y Wholesalers Corp. v. State Liquor Authority*, 63 Misc. 2d 287, 311 N.Y.S. 2d 735 (Sup. Ct. 1970).

⁴⁹ Id. at 289, 311 N.Y.S. 2d at 739.

⁵⁰ 208 Ore. 282, 300 P.2d 455 (1956).

⁵¹ See text accompanying note 10 supra.

⁵² 208 Ore. at 287-88, 300 P.2d at 457-58.

⁵³ N.Y. Unconsol. Laws § 8906 (McKinney 1961) confers upon the commission "sole control . . . over all licenses to . . . persons who participate in . . . wrestling matches or exhibitions." Pursuant to this authorization, Rule A-14, denying wrestling licenses to women, was promulgated.

⁵⁴ *Calzadilla v. Dooley*, 29 App. Div. 2d 152, 286 N.Y.S.2d 510 (4th Dep't 1968).

⁵⁵ Id. at 156-57, 286 N.Y.S.2d at 516 (emphasis added).

⁵⁶ The National Association of Bank Women reports that 270 women are bank chairmen or presidents, 20 are senior vice-presidents and 50 are executive vice-presidents. For Women, A Difficult Climb to the Top, *Bus. Week*, Aug. 2, 1969, at 42, 44. "The National Association of Bank Women, Inc. . . is an organization of 6,431 women holding bank corporate titles . . . [M]embership includes about one-third of all women officers in the country." Foster, Executive Potential on the Distaff Side, *Business*, June 1969, at 47. Moreover, about 10% of all accountants and 2% of all CPAs are women. A. King, Career Opportunities for Women in Business 68 (1963).

Many women also have less specialized business experience. In 1968, over one million women were managers, officials or proprietors. U.S. Dep't of Labor, Women's Bu-

reau Bull. No. 294, 1969 Handbook on Women Workers 90 (1969). Also, over 16,000 or 58.8% of women workers held white collar jobs. Id. Finally, 406 women earned master's degrees in business and commerce (2.7% of the degrees awarded), and 106 earned degrees in economics (9.5% of the total). More than 5,000 bachelor's degrees in business and commerce (8.6%) and over 1,000 degrees in economics were awarded to women. Id. Furthermore, in 1956, there were 5,900 women life insurance agents, about 3% of the total full-time underwriters. At the same time women made up about 1% of the agency managers and assistants. U.S. Dep't of Labor, Women's Bureau Bull. No. 229, Life Insurance Selling, Careers for Women as Life Underwriters 5 (1961).

⁵⁷ 93 Idaho 511, 465 P.2d 635 (1970), prob. juris. noted, 401 U.S. 934 (1971).

⁵⁸ Idaho Code § 15-312 (1948) establishes the order of priorities as:

- (1) surviving spouse,
- (2) children,
- (3) parents,
- (4) brothers [!],
- (5) sisters [!],
- (6) grandchildren . . .
- (10) creditors . . .

⁵⁹ Id. § 15-317.

⁶⁰ Id. § 15-315.

⁶¹ Id. § 15-314.

⁶² 93 Idaho at 514, 465 P.2d at 638.

⁶³ Analogies to racial discrimination will also be suggested with regard to other specific issues discussed in later sections. The general aptness of the race analogy to sex discrimination cases is considered in Section III, infra.

⁶⁴ Murray, The Rights of Women, in *The Rights of Americans* 521, 525 (N. Dorsen ed. 1971). For a much earlier statement of a similar view, see Comment, 13 B.U.L. Rev. 276 (1933).

⁶⁵ 208 U.S. 412 (1908).

⁶⁶ 198 U.S. 45 (1905).

⁶⁷ 208 U.S. at 421-23.

⁶⁸ In *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), for example, the Court upheld a minimum wage statute for women by forthrightly rejecting the *Lochner* rationale and clearly establishing the principle that "freedom of contract" is no bar to state regulation of wages and working conditions. Id. at 391-95. While the Court did uphold a species of sex discrimination in *Parrish*, and in passing quoted several of *Muller's* sexist statements with apparent approval, it is possible that the Court would today be less ready to sustain such a statute against an equal protection (as opposed to a due process) attack.

⁶⁹ Civil Rights Act of 1964, § 703(e), 42 U.S.C. § 2000e-2(e) (1964). For a discussion of the application of Title VII to sex discrimination, see Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964, supra note 3, at 1166-95.

⁷⁰ For a discussion of protective statutes currently in force in a number of states, see Murray, supra note 64, at 537-39.

⁷¹ See generally Oldham, Sex Discrimination and State Protective Laws, 44 Denver L.J. 344 (1967).

⁷² 29 C.F.R. § 1604.1 (b) (1971).

⁷³ *Rosenfeld v. Southern Pac. Co.*, No. 71-23983 (9th Cir., June 1, 1971); *Ridinger v. General Motors Corp.*, 325 F. Supp. 1098 (S.D. Ohio 1971); *Kober v. Westinghouse Elec. Corp.*, 325 F. Supp. 467 (W.D. Pa. 1971); *Caterpillar Tractor Co. v. Grabiec*, 317 F. Supp. 1304 (S.D. Ill. 1970); *Richards v. Griffith Rubber Mills Corp.*, 300 F. Supp. 338 (D. Ore. 1969); *Southern Cal. Edison Co. v. Utility Workers Local 246*, 61 CCH Lab. Cas. ¶ 9369 (C.D. Cal. 1969); *Sail'er Inn, Inc. v. Kirby*, Sup. Ct. 485 P.2d 529, 95 Cal. Rptr. 329 (1971). See also *Mengelkoch 1. Industrial Welfare Comm'n*, 284 F. Supp. 956 (C.D. Cal.), appeal dismissed and remanded, 393 U.S. 83 (1968). But see *Krauss v. Sacramento*

Inn Corp., 314 F. Supp. 171 (E.D. Cal. 1970); Ward v. Luttrell, 292 F. Supp. 162 (E.D. La. 1968).

Title VII also prevails over privately imposed sex discrimination of a like nature. See *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969); *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F.2d 228 (5th Cir. 1969); *Cheatwood v. South Cent. Bell Tel. & Tel. Co.*, 303 F. Supp. 754 (M.D. Ala. 1969); *Division of Human Rights v. New York-Pa. Professional Baseball League*, 36 App. Div. 2d 364, 320 N.Y.S.2d 788 (4th Dept. 1971).

⁷⁴ If weightlifting and similar regulations are invalidated by Title VII, then exclusionary statutes of the sort discussed in the previous section will also fall unless based on a "bona fide occupational qualification." Title VII does not extend beyond employment discrimination, however. Hence, the constitutional issues will be decisive in an area such as public accommodations, discussed in the next section.

⁷⁵ 400 U.S. 542 (1971).

⁷⁶ 300 F. Supp. 338 (D. Ore. 1969).

⁷⁷ Id. at 340.

⁷⁸ 408 F.2d 228 (5th Cir. 1969).

⁷⁹ Id. at 235 (emphasis added).

⁸⁰ For a criticism of the *Weeks* decision, see *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, supra note 3, at 1179-81.

⁸¹ *Adams v. Cronin*, 29 Colo. 448, 69 P. 590 (1902), aff'd, 192 U.S. 108 (1904).

⁸² Id. at 496-97, 69 P. at 593.

⁸³ 108 Ky. 473, 56 S.W. 705 (1900).

⁸⁴ Id. at 475.

⁸⁵ Id.

⁸⁶ See *Commonwealth v. Price*, 123 Ky. 163, 164-65, 94 S.W. 32, 33 (1906).

⁸⁷ Id. at 166-67, 94 S.W. at 34.

⁸⁸ Cf. *Coates v. City of Cincinnati*, 402 U.S. 611, 615 (1971).

⁸⁹ 106 N.J. Super. 401, 256 A.2d 61 (Super. Ct. App. Div.), aff'd per curiam, 55 N.J. 159, 259 A.2d 912 (1969).

⁹⁰ *Esckridge v. Division of Alcoholic Beverages Control*, 30 N.J. Super. 472, 476-77, 105 A.2d 6, 9 (Super. Ct. App. Div. 1954).

⁹¹ *One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control*, 50 N.J. 329, 235 A.2d 12 (1967).

⁹² 288 F. Supp. 530 (N.D.N.Y. 1968).

⁹³ 42 U.S.C. §§ 2000a-2000h-6 (1964).

⁹⁴ Id. §§ 1983, 1985.

⁹⁵ Id. §§ 2000a-2000a-6.

⁹⁶ *De Crow v. Hotel Syracuse Corp.*, 59 Misc. 2d 383, 298 N.Y.S.2d 859 (Sup. Ct. 1969).

⁹⁷ N.Y. Civ. Rights Law § 40 (McKinney 1948).

⁹⁸ Id. § 40-e (McKinney Supp. 1970).

⁹⁹ 317 F. Supp. 593 (S.D.N.Y. 1970).

¹⁰⁰ *Seidenberg v. McSorley's Old Ale House, Inc.*, 308 F. Supp. 1253 (S.D.N.Y. 1969).

¹⁰¹ 317 F. Supp. at 605-06.

¹⁰² The sole exception was a jury of females called to determine the fact of pregnancy. 3 W. Blackstone, Commentaries *362 (1775).

¹⁰³ See generally *Fay v. New York*, 332 U.S. 261, 289-90 (1947).

¹⁰⁴ 2 Wash. Terr. 267, 5 P. 305 (1884).

¹⁰⁵ Id. at 274, 5 P. at 306.

¹⁰⁶ Id. at 278-79, 5 P. at 309-10.

¹⁰⁷ Id. at 281, 5 P. at 311.

¹⁰⁸ 3 Wash. Terr. 131, 13 P. 453 (1887).

¹⁰⁹ The ground chosen was a narrowly technical one, but the result was sweeping: For failure to properly express its "object" in its title, the statute conferring voting rights on women in Washington Territory was held to be invalid. The result was to render women not only ineligible for jury service, but also ineligible to vote. In 1888, the Washington Legislature acted again to confer suffrage on women, but the statute was again struck down, this time as being outside the power of the territorial legislature. *Bloomer v. Todd*, 3 Wash. Terr. 599, 19 P. 135 (1888).

¹¹⁰ Of course, the nineteenth amendment took precedence over any contrary provision of state law; if it had provided that jury

qualifications should be equal for both sexes, no state law to the contrary would have prevailed. The amendment was universally held, however, to be directed solely at suffrage. E.g., *State v. Mittle*, 120 S.C. 526 113 S.E. 335, writ of error dismissed for want of jurisdiction, 260 U.S. 705, cert. denied, 260 U.S. 744 (1922).

¹¹¹ E.g., *People v. Barlitz*, 212 Mich. 580, 180 N.W. 423 (1920); *Parus v. District Court*, 42 Nev. 229, 174 P. 706 (1918). For a collection of cases, see Annot., 157 A.L.R. 461, 470 (1945).

¹¹² 276 Mass. 398, 177 N.E. 656 (1931), cert. denied, 284 U.S. 684 (1932). Another example is *People ex rel. Pyfe v. Barnett*, 319 Ill. 403, 150 N.E. 290 (1925). But see *People ex rel. Denny v. Traeger*, 372 Ill. 11, 22 N.E.2d 679 (1939).

¹¹³ Ten years earlier, the Supreme Judicial Court of Massachusetts had been asked by the state's House of Representatives whether, in light of the ratification of the nineteenth amendment, women were automatically qualified as jurors, and, if not, whether the legislature had the power to declare them qualified. The court answered these questions in the negative and affirmative, respectively. In re Opinion of the Justices, 237 Mass. 591, 130 N.E. 685 (1921). The jury statute under consideration in *Welosky* was the statute which had been considered in the court's earlier opinion; because of its advisory nature, however, the earlier opinion was expressly treated in *Welosky* as nonbinding although, as the text indicates, it was not repudiated. 276 Mass. at 400, 177 N.E. at 658 (1931).

¹¹⁴ 276 Mass. at 407-08, 177 N.E. at 661.

¹¹⁵ Id. at 410-11, 177 N.E. at 662. As examples of cases where these two factors were given weight, see *People v. Shannon*, 203 Cal. 139, 141-42, 263 P. 522, 523 (1928); *State v. Kelley*, 39 Idaho 668, 676, 229 P. 659, 662 (1924).

¹¹⁶ Cases which found no constitutional obstacle to the addition of women to juries include: *People ex rel. Denny v. Traeger*, 372 Ill. 11, 22 N.E.2d 679 (1939), and *Commonwealth v. Maxwell*, 271 Pa. 378, 114 A. 825 (1921). See also *United States v. Wood*, 299 U.S. 123, 145 (1936), where there is dictum to the effect that the jury trial provision of the sixth amendment is no bar to the addition of women to the jury.

¹¹⁷ 224 N.C. 581, 31 S.E.2d 858 (1944).

¹¹⁸ Id. at 591, 31 S.E.2d at 865 (Devlin, J., dissenting).

¹¹⁹ Id. at 601, 31 S.E.2d at 871-72 (Seawell, J., dissenting). Another way to deal with the historical argument is to meet it on its own ground. In *Commonwealth v. Maxwell*, 271 Pa. 378, 114 A. 825 (1921), the court held that historically the most important feature of trial by jury had been that the legislature had the power to set jury qualifications.

¹²⁰ 100 U.S. 303 (1879).

¹²¹ Id. at 310.

¹²² 329 U.S. 187, 193-94 (1946). In the earlier case, *Glasser v. United States*, 315 U.S. 60 (1942), the Court had refused to find that an all-male federal grand jury had been improperly constituted. This holding, however, was based on the fact that only a very short period of time had elapsed between the enactment of the Illinois statute qualifying women for jury service and the selection of the grand jury in question. Id. at 64-65. The Court's clear implication was that absent these circumstances, the exclusion of women from the jury list would have been error.

¹²³ 329 U.S. at 193-94 (1946).

¹²⁴ 332 U.S. 261 (1947).

¹²⁵ The defendants in *Fay* were male labor union officials who had been convicted of extorting payments from employers by threats of various kinds. Their principal ground of appeal was the asserted invalidity of the process by which the special "blue ribbon" jury panel was drawn, alleging that the process discriminated both against women and against laborers, craftsmen and

service employees—the "working class" in general. The five-member majority's opinion appears to hold that the record on appeal justified a finding of no purposeful discrimination; it also declares that such discrimination, even if present, would not necessarily constitute a denial of equal protection to defendants. Mr. Justice Murphy's dissenting opinion does not touch on the issue of sex discrimination, and, in light of the nature of the defendants' activities, it seems likely that the allegations of economic and social discrimination were the main basis of defendants' argument.

¹²⁶ 332 U.S. at 289-90.

¹²⁷ 136 Fla. 644, 187 So. 392 (1939).

¹²⁸ Id. at 665, 187 So. at 401.

¹²⁹ The court's rationale is also called into question by the many cases throughout the country which have considered whether a particular defendant has standing to raise the issue of exclusion of women from the jury lists. A rule applied in many state courts, although apparently not favored in the federal courts, is that only a female defendant has standing to raise the issue, on the theory that it is the female defendant whose interests are threatened by practices which operate to exclude women. For cases applying the majority rule, see, e.g., *Griffin v. State*, 183 Ga. 775, 190 S.E. 2 (1937); *McKinney v. State*, 3 Wyo. 719, 30 P. 293 (1892). Contra, *Walter v. State*, 208 Ind. 231, 195 N.E. 268 (1935). As to the federal courts, compare *United States v. Butera*, 420 F.2d 564, 567 n.2 (1st Cir. 1970), with *Woodruff v. Breazeale*, 291 F. Supp. 130 (W.D. Miss. 1967), aff'd, 401 F.2d 997 (5th Cir. 1968).

¹³⁰ 251 F. Supp. 401 (M.D. Ala. 1966) (3-judge court).

¹³¹ Id. at 409.

¹³² Ala. Code tit. 30, § 21 (Supp. 1969), amending Ala. Code tit. 30, § 21 (1958); Miss. Code Ann. § 1762 (Supp. 1970), amending Miss. Code Ann. § 1762 (1942); S.C. Code Ann. § 38-52 (Supp. 1970), amending S.C. Code Ann. § 38-52 (1962).

¹³³ *State v. Hall*, 187 So. 2d 861 (Miss.), appeal dismissed, 385 U.S. 98 (1966). See also *Philpot v. State*, 43 Ala. App. 326, 190 So. 2d 293 (1966).

¹³⁴ *State v. Hall*, 187 So. 2d 861, 863 (Miss. 1966).

¹³⁵ *Ford v. White*, 430 F.2d 951, 955 (5th Cir. 1970). See also *United States v. Butera*, 420 F.2d 564 (1st Cir. 1970) holding that inclusion of a disproportionately small number of women on the master jury list raises an inference of purposeful discrimination. Occasionally, the intentional exclusion of women jurors from a particular case will be frankly admitted. E.g., *Abbott v. Mines*, 411 F.2d 353 (6th Cir. 1969) (trial judge had barred all women from jury empaneled to try malpractice action involving cancer of the penis); *State ex rel. Passer v. County Bd.*, 171 Minn. 177, 213 N.W. 545 (1927) (trial court excluded females from panel when a number of "carnal knowledge" cases were pending).

¹³⁶ E.g., *State v. Bray*, 153 La. 103, 95 So. 417 (1923).

¹³⁷ E.g., *Leighton v. Goodman*, 311 F. Supp. 1181 (S.D.N.Y. 1970).

¹³⁸ 368 U.S. 57 (1961).

¹³⁹ Id. at 61-62.

¹⁴⁰ Id. at 65.

¹⁴¹ The idea that exclusion is the natural result of the women-volunteers-only type of exemption statute is also strongly suggested by the Louisiana cases. See *State v. Reese*, 250 La. 151, 171, 194 So. 2d 729, 737, cert. denied, 389 U.S. 996 (1967); *State v. Dreher*, 166 La. 924, 943, 118 So. 85, 92, cert. denied, 278 U.S. 641 (1928); *State v. Bray*, 153 La. 103, 106, 95 So. 417, 418 (1923). In each of these cases involving a female defendant there were apparently no women on the jury panel in the defendant's parish.

¹⁴² E.g., *Strauder v. West Virginia*, 100 U.S. 303 (1879). See generally, *Swain v. Alabama*, 380 U.S. 202, 204, 228-29 (1965).

¹⁴³ 368 U.S. at 68.

¹⁴⁴ Before the Florida statute was amended in 1967, it was once more unsuccessfully challenged, this time on the ground that it operated unfairly to exclude black women from juries. *Scott v. State*, 207 So. 2d 493 (Fla.), cert. denied, 393 U.S. 884 (1968).

¹⁴⁵ 311 F. Supp. 1181 (S.D.N.Y. 1970).

¹⁴⁶ Id. at 1183.

¹⁴⁷ In 1965, 37% of all women of working age were in the labor force. Nearly 60% of these women were married, and over a third had children under 18 years of age. In families where all children were over six years old and the fathers were at home and working, 43% of the wives were employed. U.S. Dep't of Labor, Women's Bureau Bull. No. 240, 1965 Handbook on Women Workers 15, 21, 37, 42 (1965). Whether these figures show that the "great majority" of women spend a 24-hour day at home is debatable. They certainly do not support the proposition that the working woman represents an aberration, which seems to be the court's view.

¹⁴⁸ 63 Misc. 2d 895, 313 N.Y.S.2d 827 (Sup. Ct. 1970).

¹⁴⁹ Id. at 898, 313 N.Y.S.2d at 830. The *DeKosenko* opinion was written by a judge who had earlier exhibited insensitivity to the aspirations of women. See *Goldblatt v. Board of Educ.*, 52 Misc. 2d 238, 275 N.Y.S.2d 550 (Civ. Ct. 1966), aff'd, 57 Misc. 2d 1089, 294 N.Y.S.2d 272 (Sup. Ct. 1968) (holding a female teacher not entitled to benefit of differential salary payment during her period of jury service, though male teacher would be so entitled).

¹⁵⁰ *Hoyt v. State*, 119 So. 2d 691, 701-02 (Fla. 1960) (Hobson, J.), aff'd, 368 U.S. 57 (1961).

¹⁵¹ A Florida Supreme Court judge who dissented in the *Hoyt* case raised this point:

No one in this enlightened age would question the fact that if a limitation such as is placed upon women by our statute with reference to jury service were engrafted into our statutory law in regard to some of the so-called minority groups comprising our citizenry, it would be stricken down as violative of constitutional guarantees of due process and equal protection of the laws.

Id. at 700.

¹⁵² There seems to be no reason why a jury statute could not simply provide an exemption for any individual (regardless of sex) having the personal responsibility of caring for a minor child. While most of the prospective jurors thus excused might still be women, the exemption would then be related to a relevant circumstance affecting particular individuals, and men coming within its provisions would be entitled to a similar exemption. Such a statute was upheld against constitutional challenge in *State v. Smith*, 102 N.J. Super. 325, 246 A.2d 35 (Super. Ct. 1968), aff'd, 55 N.J. 476, 262 A.2d 868, cert. denied, 400 U.S. 949 (1970).

¹⁵³ 317 S.W.2d 86 (Tex. Civ. App. 1958), cert. denied, 359 U.S. 230 (1959).

¹⁵⁴ Id. at 99.

¹⁵⁵ Id. at 100.

¹⁵⁶ 336 S.W.2d 251 (Tex. Civ. App.), cert. denied, 364 U.S. 517 (1960).

¹⁵⁷ Id. at 262-63.

¹⁵⁸ Id. at 261.

¹⁵⁹ 309 F. Supp. 184 (E.D. Va. 1970).

¹⁶⁰ 163 U.S. at 537 (1866).

¹⁶¹ 309 F. Supp. at 187 n.1. There is one other recent case involving a state university in which sex discrimination was successfully challenged on equal protection grounds. In *Mollere v. Southeastern La. College*, 304 F. Supp. 826 (E.D. La. 1969), female plaintiffs complained of a rule which required all female students under the age of 21 (regardless of their year) to live in college dormitories while subjecting only freshmen men to the same requirement. The court held the rule to be a violation of equal protection, but the significance of its opinion is unclear in light of the conceded fact that the rule's sole

purpose was to insure adequate income from dormitory fees; there was apparently no argument that the policy was based in any respect on any differences between men and women. The opinion is an interesting example of one court's application of the equality principle in a sex-discrimination case, however, particularly in its use of a race-discrimination analogy to make a point about arbitrary treatment. Id. at 827 n.1.

¹⁶² 3 16 F. Supp. 134 (D.S.C. 1970), aff'd mem., 401 U.S. 951 (1971) (Justice Harlan dissenting on the issue of whether direct appeal to the Supreme Court was available).

¹⁶³ Id. at 137.

¹⁶⁴ Id. at 137 n.3.

¹⁶⁵ See *Green v. County School Bd.*, 391 U.S. 430 (1968); *Goss v. Board of Educ.*, 373 U.S. 693 (1963).

¹⁶⁶ 105 Kan. 139, 181 P. 630 (1919).

¹⁶⁷ Id. at 140-41, 181 P. at 631.

¹⁶⁸ Id. at 146-47, 181 P. at 633-34.

¹⁶⁹ See, e.g., *Ex parte Gosselin*, 141 Me. 412, 44 A.2d 882 (1945), appeal dismissed sub nom. *Gosselin v. Kelly*, 328 U.S. 817 (1946); *Ex parte Brady*, 116 Ohio St. 512, 157 N.E. 69 (1927).

¹⁷⁰ 281 F. Supp. 8 (D. Conn. 1968).

¹⁷¹ 388 U.S. 1 (1967) (invalidating Virginia's antimiscegenation statute).

¹⁷² 281 F. Supp. at 14.

¹⁷³ Id. at 16.

¹⁷⁴ *United States ex rel. Sumrell v. York*, 288 F. Supp. 955 (D. Conn. 1968).

¹⁷⁵ *Liberti v. York*, 28 Conn. Supp. 9, 246 A.2d 106 (Super. Ct. 1968).

¹⁷⁶ 430 Pa. 642, 243 A.2d 400 (1968).

¹⁷⁷ Id. at 650, 243 A.2d at 404.

¹⁷⁸ Id.

¹⁷⁹ The principle of the *Daniel* case has also been applied in Pennsylvania to the issue of where the defendant will be imprisoned. In *Commonwealth v. Stauffer*, 214 Pa. Super. 113, 251 A.2d 718 (1969), the defendant had been sentenced to a state penitentiary for women. On appeal, she was ordered returned to the county jail, it being conceded that any man convicted of the same offense would be confined in a county institution. The opinion nowhere suggests that separate imprisonment of men and women is constitutionally suspect; it does, however, suggest that the type of confinement must be substantially the same for both sexes.

Another recent Pennsylvania case involved still a different type of sex discrimination. In *In re Williams*, 210 Pa. Super. 388, 234 A.2d 37 (1967), aff'd sub nom. *In re Jones*, 432 Pa. 44, 246 A.2d 356 (1968), the commitment of two youthful males to a correctional institution as "defective delinquent juveniles" was challenged on the ground that the stated procedure was applicable only to males. The Superior Court held the constitutional challenge to be without merit, supporting its holding largely by quotations from its opinion in the *Daniel* case, 210 Pa. Super. 156, 232 A.2d 247 (1967), later reversed by the Pennsylvania Supreme Court. The issue of unconstitutional sex discrimination was apparently not argued on appeal. Cf. *Chambers v. Director*, 244 Md. 697, 223 A.2d 774 (1966) (dictum that limiting a state procedure for the treatment of "defective delinquents" to males is not unconstitutional). But see *Morgan v. State*, 179 Ind. 300, 101 N.E. 6 (1913) (holding unconstitutional a state statute providing for the commitment to an institution for "insane criminals" of any male defendant acquitted of a felony charge solely by reason of insanity).

The Pennsylvania Supreme Court has also indicated a willingness to extend the principle of the *Daniel* case to invalidate sentences meted out to juvenile offenders that are longer than those imposed on adults for identical offenses. In *re Wilson*, 438 Pa. 405, 430-32, 264 A.2d 614, 617-18 (1970). At least one other court has rejected this approach, in the absence of a showing by the accused that the state's juvenile correction system is devoid of rehabilitative aspects beyond those

of mere confinement and discipline. *Smith v. State*, 444 S.W.2d 941, 948 (Tex. Civ. App. 1969). See also the cases cited in Comment, 82 Harv. L. Rev. 921, 925-26 n.25 (1969). On the general topic of sentencing, see Rubin, *Disparity and Equality of Sentences: A Constitutional Challenge*, 40 F.R.D. 55 (1967).

¹⁸⁰ 266 A.2d 62 (Me.), cert. denied, 400 U.S. 952 (1970).

¹⁸¹ Id. at 64.

¹⁸² Id. at 65.

¹⁸³ For one hypothetical example, see the suggestion by Professor Graham Hughes in *The Right to Special Treatment, in The Rights of Americans* 102 (N. Dorsen ed. 1971).

¹⁸⁴ Some doubt may be cast on this proposition, however, by a decision such as *Commonwealth v. Stauffer*, 214 Pa. Super. 113, 251 A.2d 718 (1969). See note 179 supra. *Stauffer* can be distinguished, however, on the ground that in that case it was a female defendant who was being treated as the greater risk.

¹⁸⁵ See Lippman, *The Breakdown of Consortium*, 30 Colum. L. Rev. 651 (1930).

¹⁸⁶ *Marri v. Stamford St. R.R.*, 84 Conn. 9, 12, 78 A. 582, 583 (1911).

¹⁸⁷ Lippman, supra note 185, at 652-53.

¹⁸⁸ For a good short discussion of these rationales, see Note, *Equal Protection: The Wife's Action For Loss of Consortium*, 54 Iowa L. Rev. 510, 517-21 (1968). For a trenchant criticism of the rule barring recovery by wives, see Foster, *Relational Interests of the Family*, 1962 U. Ill. L.F. 493, 520.

¹⁸⁹ See cases cited in *Hittaffer v. Argonne Co.*, 183 F.2d 811, 812-13 n.5 (D.C. Cir.), cert. denied, 340 U.S. 852 (1950).

¹⁹⁰ To the extent that *Hipp v. E. I. DuPont*, 182 N.C. 9, 108 S.E. 318 (1921) was not in accord, it was overruled by *Hinnant v. Tidewater Power Co.*, 189 N.C. 120, 127-29, 126 S.E. 307, 311-12 (1925).

¹⁹¹ See Lippman, supra note 185, at 665-69.

¹⁹² In a few jurisdictions, the Married Women's Act was held to deprive the husband of his cause of action for loss of consortium, forcing him to share the wife's disability. See, e.g., *Marri v. Stamford St. R.R.*, 84 Conn. 9, 78 A. 582 (1911); *Bolger v. Boston Elevated Ry.*, 205 Mass. 420, 91 N.E. 389 (1910); *Helmstetler v. Duke Power Co.*, 224 N.C. 821, 32 S.E.2d 611 (1945).

¹⁹³ 183 F.2d 811 (D.C. Cir.), cert. denied, 340 U.S. 852 (1950).

¹⁹⁴ Id. at 819.

¹⁹⁵ The *Hittaffer* case involved two different issues: whether a wife can recover for loss of consortium as a matter of general law, and whether the workmen's compensation statute for the District of Columbia permitted any recovery for loss of consortium. The court answered both questions affirmatively. In *Smith & Co. v. Coles*, 242 F. 2d 220 (D.C. Cir.), cert. denied, 354 U.S. 914 (1957), *Hittaffer* was overruled on the second issue. It was reaffirmed on the first issue, however, in *Rollins v. District of Columbia*, 265 F. 2d 347 (D.C. Cir. 1959).

¹⁹⁶ See W. Prosser, *Torts* § 119 (3d ed. 1964); *Restatement (Second) of Torts* § 695, at 13-21 (Tent. Draft No. 14, 1969); *Annot.*, 23 A.L.R. 2d 1378 (1952).

¹⁹⁷ Three recent decisions following *Hittaffer* and overruling contrary precedent are *Troue v. Marker*, 252 N.E. 2d 800 (Ind. 1969); *Millington v. Southeastern Elevator Co.*, 22 N.Y. 2d 498, 239 N.E. 2d 897, 293 N.Y.S. 2d 305 (1968); and *Clouston v. Remlinger Oldsmobile Cadillac, Inc.*, 22 Ohio St. 2d 65, 258 N.E. 2d 230 (1970). Pennsylvania reaffirmed its adherence to the no-recovery rule by a 5-2 margin in *Brown v. Glenside Lumber & Coal Co.*, 429 Pa. 601, 240 A. 2d 822 (1968).

¹⁹⁸ *Burk v. Anderson*, 232 Ind. 77, 109 N.E. 2d 407 (1952); *Boden v. Del-Mar Garage*, 205 Ind. 59, 185 N.E. 860 (1933); *Miller v. Sparks*, 136 Ind. App. 148, 189 N.E. 2d 720 (1963). All three were expressly overruled in *Troue v. Marker*, 252 N.E. 2d 800, 806 (Ind. 1969).

¹⁹⁹ *Owen v. Illinois Baking Corp.*, 260 F. Supp. 820 (W.D. Mich. 1966).

²⁰⁰ 274 F. Supp. 169 (N.D. Ill. 1967).

²⁰¹ Id. at 175.

²⁰² *Contra*, *Krohn v. Richardson-Merrell, Inc.*, 219 Tenn. 37, 406 S.W.2d 166 (1966), cert. denied, 386 U.S. 970 (1967); *Seagraves v. Legg*, 147 W. Va. 331, 127 S.E.2d 605 (1962).

²⁰³ 399 F.2d 847 (7th Cir. 1968), cert. denied, 393 U.S. 1066 (1969). At the time of the *Miskunas* decision, both Illinois and Wisconsin had followed *Hitafer*. Subsequently, Indiana did also. *Troue v. Marker*, 252 N.E.2d 800 (Ind. 1969). The equal protection issue now appears moot in the Seventh Circuit, except as to causes of action arising prior to the changes in state law.

²⁰⁴ 399 F.2d at 850.

²⁰⁵ See generally W. Prosser, *Torts* § 55 (3d ed. 1964).

²⁰⁶ The Supreme Court has never squarely held that any form of sex discrimination violates the equal protection guarantee. Moreover, as recently as the spring of 1971, in *Williams v. McNair*, 401 U.S. 951 (1971), the Court summarily affirmed a decision upholding South Carolina's operation of a sex-segregated college against an equal protection challenge. (We have already noted our reservations about the Court's disposition of that case; see text accompanying notes 162-65 supra.) Since no opinion was handed down in *Williams*, however, there is no way to discover the basis for the Court's conclusion that no constitutional violation had been demonstrated.

The Court obviously has not foreclosed the possibility that some forms of sex discrimination can violate the guarantee of equal protection, however, as evidenced by its agreement to hear at least three cases in which this issue is directly presented: *Reed v. Reed*, 93 Idaho 511, 465 P.2d 835 (1970), prob. juris. noted, 461 U.S. 934 (1971), discussed in the text accompanying notes 57-63 supra; *In re Stanley*, 45 Ill.2d 132, 256 N.E.2d 814 (1970), cert. granted sub nom. *Stanley v. Illinois*, 400 U.S. 1020 (1971), involving alleged discrimination against the male parent in awarding custody of illegitimate children; and *State v. Alexander*, 255 La. 941, 233 So.2d 891 (1970), cert. granted sub nom. *Alexander v. Louisiana*, 401 U.S. 936 (1971), involving a claim that females were systematically excluded from the grand jury which returned a rape indictment against the defendant, a male Negro. (The state court's opinion in the *Alexander* case indicates that race discrimination was the principal ground of defendant's motion to quash the indictment, however.) The decisions in these three cases are expected to reveal the attitudes of the current members of the Court toward equal protection as it applies to sex discrimination.

It must be acknowledged, however, that several recent Supreme Court decisions have appeared to restrict, rather than enlarge, the scope of the equal protection clause. In *James v. Valtierra*, 402 U.S. 137 (1971), the Court upheld a provision of the California constitution prohibiting construction of any low rent housing project unless it had received prior approval in a local referendum. Petitioners had contended that this special obstacle to the provision of low income housing discriminated against the poor, violating their right to equal protection. In *Hunter v. Erickson*, 393 U.S. 385 (1969), the Court had earlier held invalid a similar law requiring a referendum as a prerequisite to the passage of any "fair housing" ordinance designed to prohibit racial discrimination. Mr. Justice Black (the sole dissenter in *Hunter*) wrote the Court's opinion in *James*; four justices joined him in refusing to extend the *Hunter* holding to invalidate discrimination which was apparently directed only against persons of low income, without regard to race. (Justices Marshall, Brennan, and Blackmun dissented; Justice Douglas did not participate.)

In *Levy v. Louisiana*, 391 U.S. 68 (1968) and *Giona v. American Guarantee and Liability Insurance Co.*, 391 U.S. 73 (1968) the

Court (dividing 6-3 declared discriminatory treatment of illegitimates in a State's Wrongful Death Act to be a violation of equal protection. After Chief Justice Warren and Justice Fortas had been replaced by Chief Justice Burger and Justice Blackmun, however, a new 5-4 majority reached a different conclusion in *Labine v. Vincent*, 401 U.S. 532 (1971), involving an illegitimate's right to inherit from his natural father. Mr. Justice Black, again writing the majority opinion, attempted in *Labine* to distinguish *Levy* and *Giona*; *Labine* nevertheless casts great doubt on the validity of the proposition—which arguably had been established in *Levy* and *Giona*—that illegitimacy constitutes a "suspect classification" for purposes of equal protection.

These decisions indicate that the Court is sharply divided over the scope of the equal protection clause, and specifically over the question of what (if any) application it may have outside the area of race discrimination. In this regard, see also *Oregon v. Mitchell*, 400 U.S. 112 (1970), especially the discussion at 126-31 (Mr. Justice Black's opinion, seemingly arguing that the fourteenth amendment applies only to racial discrimination) and 150-52 (appendix to the opinion of Mr. Justice Douglas, listing cases said to have struck down, on equal protection grounds, statutes discriminating on bases other than race). The only prediction that the authors feel safe in making about the three currently pending cases is that the decisions are not likely to be unanimous, and are even less likely to be embodied in a single opinion.

²⁰⁷ *Sassower*, supra note 13, at 330.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 5 minutes.

Mr. PERCY. Mr. President, I shall be very brief. I hope I can be briefer than 5 minutes.

Mr. President, I have tremendous respect for my colleague, the Senator from North Carolina. I have joined him in the past on many issues, such as "speedy trial" and others involving individual rights and liberties. However, I could not be more opposed than I am now to the position the Senator from North Carolina has taken for men and women in this area of equal rights.

I have deep respect for his knowledge and the Constitution and for the knowledge possessed by Professor Kurland of the University of Chicago. I agree with him that adequate authority now exists for Congress and the legislatures of the States to pass legislation that, as he has put it, is directed at specific evils and for effective administration of legislation to eliminate invidious discrimination.

I would only ask one question: If this authority does exist and has existed all these years, then why have we not, for heaven's sake, done something about exercising this authority?

I do not know of anyone in this body who would not recognize and appreciate that there is discrimination against women in business; that there is discrimination against women in the labor unions in this country; on virtually every university campus in this country; and in virtually every governmental agency and department.

If we had authority to do something about it, why did we not do something about it before?

Mr. President, the Senate's imminent

action in approving the equal rights amendment draws to a close the 49-year debate that has surrounded the issue of equal rights for men and women. It is the culmination of a great deal of effort on the part of the amendment's supporters in the House and Senate. I think we are deeply indebted to the distinguished Senator from Indiana (Mr. BAYH) and the distinguished Senator from Kentucky (Mr. COOK), who have worked relentlessly to see the amendment through the Judiciary Committee and to muster support from both sides of the aisle. As a cosponsor of Senate Joint Resolution 9, I have strongly endorsed not only this proposal but each one directed toward insuring equal treatment under the law for men and women since first coming to the Senate in 1966.

I believe the Senate has done a great service to this country by rejecting every single effort to cripple the basic amendment which is to be submitted to three-fourths of the States for ratification.

Even among the resolution's opponents, there seems to be little question but that tradition and law have worked together to relegate women to an inferior status in our society. In many cases this has been intentional, based on an archaic precept that women, for physiological or functional reasons, are inferior. This concept has led to the implementation of laws that prohibit women from engaging in certain businesses, managing their own properties and finances, entering into legal contracts, holding jobs which they are deemed incapable of performing, actively competing in public and private educational institutions for a quality education, and serving on a jury.

Certainly a form of male chauvinism was practiced in the Senate for almost two centuries, until only last year by preventing young women from gaining invaluable experience in Government through serving as Senate pages. Certainly as we look back at the experience we have had since last year with girl pages in the Senate, we can see that the arguments conjured up against their being permitted to so serve have certainly evaporated. These arguments look as shallow to us today as many of us felt they were all along.

Where discrimination has been less overt, we have imposed on women certain responsibilities that make it impossible for them to achieve equality. Marriage and divorce laws are primary examples of this.

Married women may by law expect in many instances nothing more than their husbands decide to give them. Once the marriage has been dissolved, a woman ordinarily has custody of the couple's children making it difficult if not impossible for her to work outside the home, although she must also assume the major responsibilities of supporting those children. Statistics on alimony and child support, which I have entered into the record, indicate that 1 year after the divorce only 38 percent of the fathers are in compliance with courts' support orders. After 10 years, only 13 percent are in compliance. What this means is that women, under the concept of maternity rights, must physically care for

the children and assume the financial responsibility of earning a living for them as well.

Application of our criminal laws to women offenders is another example of inequality. Many States' laws automatically prescribe longer prison sentences for women than for men.

We now live under an ambiguous, conflicting, and discriminatory set of laws that in many cases do not even pretend to insure equal treatment for men and women. It seems a fairly simple principle of equity that the difference of treatment under the law should not be based on sexual distinctions, but rather, if there must be a difference, on the basis of some relevant material facts which compel the distinction. I am confident that the constitutional amendment which the Senate is about to approve will achieve that equality.

I suppose, in all candor, that other methods such as amending current labor, marriage, contract and corporate laws could also achieve this desired purpose. But the approach would be piecemeal, timeconsuming and for some States, ineffective. Only a constitutional amendment will provide the universal applicability and impetus to States to reform their laws and practices to be consistent with the constitutional mandate.

There are numerous misunderstandings as to what a constitutional amendment will, in practice, do. Many feel that an amendment will bring chaos to the employment field. It is true that the ERA will overturn States' so-called protective labor laws where they exist. But in view of the fact that modern technology has made such laws unnecessary and nonessential, the disruptive impact of the amendment would, in my view, be minimal. The amendment sets no quotas on the employment of women in any business, neither does it encourage women to abandon their homes to compete with men in the business area. It simply says that if a woman chooses to work, she must have the unfettered opportunity to do so and be regarded as equal to men in all phases of her employment, promotion, and working conditions.

Neither does the equal rights amendment lessen or demean the importance of women as wives, mothers, and mainstays of the home. Equality does not imply sameness. While the family structure is at the heart of our society and this legislation does nothing to disrupt that notion, we must recognize that women of today are different, they are aware of and willing to accept their responsibilities as citizens in a modern society and ought to be free to accept those responsibilities much as they are free to remain in the home if that is their choice. It was Susan B. Anthony, great defender of women's rights, who said almost a century ago that:

Modern invention has banished the spinning wheel, and the same law of progress makes the woman of today a different woman from her grandmother.

Today we will truly acknowledge that equality can no longer be legally conditioned upon sex, that women, as they assume new roles in our society, deserve as a matter of law equal treatment under the law.

I commend the Senate in advance for the action it is about to take passing the amendment without any crippling changes and am proud that I was able to play a role in bringing about this important change in the law.

Mr. BAYH. Mr. President, I yield 1 minute to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, in my inaugural address as Governor of South Carolina, I advocated equal rights for women. I have favored this principle since that time.

I am very proud of the action that I feel the Senate will take today in passing this amendment so that it may be submitted to the States for ratification. I predict that the States will approve it.

Mr. President, I would like to say a few words in support of the equal rights amendment. This proposed constitutional amendment providing for equal rights for men and women has been introduced in nearly every Congress since 1923, shortly after the ratification of the 19th amendment extending the right to vote to women. The mere fact that this amendment has persevered so long is evidence of the grave need many people have attached to the importance of the amendment.

Even though there has been progress in recent years toward the goal of equal rights and responsibilities for men and women, there is overwhelming evidence that persistent patterns of sex discrimination permeate our social, cultural, and economic life. This holds true in spite of recent laws and Supreme Court decisions aimed at prohibiting such blatant discrimination.

For an example, working women are at a great disadvantage in private business. The median salary income for women is only 59.5 percent of that earned by men and the gap between male and female median incomes has been widening in recent years. In 1969, less than 5 percent of all full-time female workers earned over \$10,000 per year, compared with 35 percent of all male workers. Sex discrimination also is present in government employment, which accounts for more than 20 percent of the labor force.

Mr. President, many States have business and labor laws which invidiously discriminate against women. These laws vary in their direction and import, but all have the effect of restricting or prohibiting women from engaging in a particular job or occupation. Many of these so-called "protective" labor laws are well intended, but they are a great disadvantage to the working women. For example, a law which limits the working hours of women but not for men makes it more difficult for women to obtain work they desire and for which they are qualified to perform or to become supervisors.

Last year the Supreme Court for the first time struck down a law which discriminated against women. The Court in Reed against Reed invalidated a State law which arbitrarily favored men over women as administrators of estates. This case is a step in the right direction; however, it does not go far enough. The Court did not hold that sex discrimination is

"suspect" under the 14th amendment, but left the burden on every woman plaintiff to prove that governmental action perpetuating sex discrimination is "unreasonable."

Theoretically, this amendment may not be necessary because the Court, Congress, and the States could eventually strike down all sex discrimination laws. This approach is not practical mainly because it is too haphazard and too slow to be acceptable.

Therefore, the only practical basis to provide the necessary changes is through a constitutional amendment. The Nation has waited far too long for this important congressional action. It is now time for the Senate of the United States to act affirmatively on this important constitutional amendment.

The context of this amendment is short and concise and accomplishes the necessary change with a minimum of verbiage. The amendment essentially requires that the Federal Government and all State and local governments treat each person, male and female, as an individual. It applies only to governmental action; it does not affect private action or purely social relationships between men and women.

Mr. President, I have long been a supporter of the equal rights amendment. However, this amendment would compel women to be drafted into the armed services and subject them to combat duty which may be neither necessary or desirable in our society. For this reason, I supported amendments to prevent this. The intent of these proposals was to allow the Congress to exempt our women from certain military obligations without infringing upon the great benefits guaranteed by the basic amendment. I do not feel that such obligations should be imbedded in the Constitution and believe Congress should have the power of decision concerning selection of persons eligible for the draft.

Mr. President, despite Senate rejection of the draft provision, I feel the need for the equal rights amendment is obvious. The time for this amendment is now. I, therefore, urge the Senate to act immediately and favorably on this necessary amendment to the U.S. Constitution.

Mr. BAYH. Mr. President, I yield 3 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 3 minutes.

Mr. COOPER. Mr. President, I will be brief. I have voted for practically all of the amendments which the distinguished Senator from North Carolina has offered. I voted for them because I thought they raised the valid question whether certain protections now accorded by law to women would be abrogated if the constitutional amendment is finally approved. I hope the State legislatures of our country will give due consideration and debate to these important questions raised by the Senator from North Carolina.

I believe they have merit, and although I shall vote for the constitutional amendment, I believe it will pose difficult problems for State legislatures and the Congress when they attempt to maintain

protections, such as exemption from military draft, and protection and support of children by fathers.

The Senator from North Carolina is a great constitutional lawyer, and an honor to the Senate. However, he has suggested an interpretation of the amendment which I believe should be opposed on the floor of the Senate. It is his suggestion of a possible interpretation by the courts of the amendment that would have the practical effect of abrogating the Federal-State relationship and of vesting in the Congress jurisdiction of practically all legislation under the control of the Congress.

With all due respect, I do not think such an interpretation could prevail. There are other provisions of the Constitution securing the Federal-State relationship and the jurisdiction of the courts; which would be considered if such is raised and they are as strong as the pending amendment.

I must say that I believe we could secure by statute practically any question to assure women necessary protection against discrimination. Some groups with whom I have talked do not understand all of the grave questions raised about their own protections and their own privileges. But they want, more than anything else, the Congress of the United States, the people of the United States to declare through a constitutional amendment they are equal to men and entitled to all possible rights.

I must say that it is compelling argument.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ERVIN. Mr. President, I yield to the Senator from Kentucky any time that he needs.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOPER. Mr. President, I want to say that I am doubtful that the amendment is really needed, but I have the belief that the women of this country believe it is needed, and that they want Congress and the State legislatures to express their full equality. I shall vote for the measure. I am hopeful and I believe we have enough faith in the courts and our Supreme Court to interpret it in such a way that it will guarantee full rights, and at the same time it will not remove from women the protections they need.

Mr. FONG. Mr. President, I ask unanimous consent to have printed in the RECORD the individual views of the Senator from Hawaii which appear in the report so that they may be available to members of State legislatures.

There being no objection, the individual views were ordered to be printed in the RECORD, as follows:

INDIVIDUAL VIEWS OF MR. FONG

It is an undisputed fact that women have not been treated the same as men in industry, in the professions or under our various State and Federal laws.

A. HISTORICAL BACKGROUND

The so-called protective legislation, such as minimum wage laws, maximum hour laws, limitations on nightwork for women, when enacted in the early part of this century was intended to protect the health, safety and morals of female workers.

Unfortunately, as more and more women joined the working force, these laws have at times been used to the detriment of women. These laws have prevented or hindered the employment of women and their promotion to positions utilizing all their abilities. This has worked not only to the detriment of women, but to the detriment of the nation, which has been denied the full benefits of their talents, training and ability.

Equal rights for women is not a new concept. As early as 1848, at the first meeting for equal rights for women, held in Seneca Falls, New York, Elizabeth Cady Stanton read her now famous "Declaration of Sentiments":

"The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her."

The Declaration, under some 15 headings, then summarized the many discriminations against women at that time. Married women were unable to own property, to retain their own earnings, to sue, to retain counsel, or even to be the guardians of their own children so long as the husband lived. And, for the most part, they were barred from all but a primary grade education, nor could they vote.

Progress has been made toward equal treatment under law for women.

The 19th Amendment in 1920 gave women the right to vote.

The Civil Rights Act of 1964, among other things, prohibited discrimination based on sex, although Section 703(e) of that Act provides that discrimination based on sex can be justified if it is pursuant to a "bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."

However, Executive Order 11375 (October 13, 1967), as amended, explicitly prohibits discrimination on the basis of sex in Federal employment and employment on Federal contracts.

Concededly, this is not enough.

B. HAWAIIAN ISLANDS

My state of Hawaii has been in the forefront of the move to eliminate statutory discrimination based on sex. Our fair employment practice law, our minimum wage and overtime pay laws apply equally to men and women. Jury qualification for men and women is the same. Women, equally with men, have the right to contract and to own property.

But even in Hawaii some laws are different for men and women. To cite a few: the laws of inheritance give a widow greater rights than they give to widowers. Certain preferences in State government employment and housing are given to widows, but not to widowers. A wife is not liable for her husband's debts. A husband is liable for a wife's debts, her proper support and maintenance. If he fails to provide suitable support, that is a ground for divorce, with temporary alimony and attorney's fees afforded only to women.

C. EFFECTS OF DISCRIMINATORY LEGISLATION BASED ON SEX AND NEED FOR REMEDIAL LEGISLATION

In many other states and under some Federal laws, there is greater discrimination, based solely on sex.

Sometimes this discriminatory legislation works to the detriment of women: higher standards are often required of women than of men; women too frequently are not hired or promoted to better paying jobs because of so-called protective legislation.

As outlined in the Report, all the criminal and civil discrepancies in treatment of men and women, in education, in business and the professions concededly exist.

On the other hand, some discriminatory legislation is beneficial to women; Women are eligible for Social Security benefits at 62,

men at 65; rights to old-age, survivors, disability and other benefits under the Social Security Act and laws administered by the Department of Defense and the Veterans Administration are much more favorable to women than men.

As the Report of the Committee points out, under the Equal Rights Amendment, one standard would be applied to all—regardless of sex. Since all persons will be treated alike, it will be necessary to amend each Federal or State law which is discriminatory in any way, be that discrimination beneficial or detrimental to women. Unless the Congress and the legislatures of each of the States enact such amendatory statutes within the two-year period provided for in the Amendment, it will fall to the courts to determine which discriminatory legislation is to be declared void and hence inapplicable to either sex, and which discriminatory legislation is to be extended to both sexes.

This legislative function should not fall to the courts by default.

After a preliminary survey of the legislation most likely to be affected, I find almost all Federal laws which treat women differently from men can be amended. For instance: depending on cost and other factors, women's eligibility to all benefits under Social Security can be (1) kept at age 62 and men's lowered to that age, or (2) men's present eligibility age of 65 extended to women, or (3) a new age for eligibility applicable to both sexes can be fixed. The third alternative may be the fair and feasible solution.

D. COMPULSORY MILITARY SERVICE

(1) Effect of Equal Rights Amendments on draft and assignment of women

However, there is one area in which insurmountable difficulties arise—military service. It is conceded by the proponents of this amendment that women, like men, will have to register for and be subject to the draft.

The Selective Service System in a letter dated February 25, 1972 advises:

"Should the legislation administered by our agency be affected by the amendment proposed in H.J. Res. 208, we would be required to register approximately two million more persons a year, twice the present number, with additional cost resulting in the areas of registration. If the additional registrants are further processed, additional costs for classification, examination and induction would result. Roughly, these costs would be doubled. The cost of operating national headquarters, the states' headquarters and the service centers, would not be materially increased but the work of the local boards and their paid employees would reach twice its present level.

"In more specific terms, in our budget for fiscal year 1973, service to registrants is \$64,726,000. To double the number of registrants might not double the cost of this phase of our activity, but would substantially increase this item. Our examination services, budgeted at \$1,107,000, is more closely related to the size of calls by the Department of Defense than to the number of registrants, and might not be substantially increased. Costs of administrative services and other activities would undoubtedly increase, but should not be doubled."

Going one step further, once women are registered, the question arises whether women must be assigned on an equal basis for all types of military service. If women are found physically qualified (under the same tests administered to determine men's qualifications) they will, in all likelihood, be required to serve in combat.

The Majority Report chooses not to face this reality. On the one hand they want equal treatment in drafting women for compulsory military service, but then, not being willing to face the consequences of this action, they fall back on the words of Congresswoman Martha Griffiths, the primary sponsor of H.J. Res. 208, on the floor:

"The draft is equal. That is the thing that is equal. But once you are in the Army you are put where the Army tells you where you are going to go." (Emphasis supplied)

Fortunately, these words were uttered by a woman. A man would have been accused of male chauvinism and of advocating discriminatory treatment of women.

The Majority Report is replete with "expectations"; including that women will not be "assigned to combat posts, nor . . . required to engage in physical combat," as is the case of the Israeli Army. They overlook the realities. Israeli women do not serve in the Armed Forces because of their demands for equal treatment regardless of sex, but because of Israel's small population, the services of each individual is indispensable to the defense of the country. Hence, different treatment of the women and the men in the Israeli Army is acceptable, even though incompatible with the concept of the Equal Rights Amendment.

Interestingly, on the subject of the present service of men and women in the Israeli Army, the maintenance of "separate and independent facilities" for women soldiers, is conceded, as is the fact that women soldiers perform tasks "in the clerical, communication, electronics and nursing fields." These tasks are characterized in the Report as "critical noncombatant tasks,"—yet, women are assigned these tasks on the basis of sex.

Hence, under H.J. Res. 208, as reported out by the Senate Judiciary Committee, it is my firm conviction that if women pass the same tests as given men prior to assignment to duty, they must also serve on combat duty, if found qualified for such duty.

Furthermore, the Department of Defense points out that if women could not be assigned to field duty, it might result in a disproportionate number of men serving more time in the field and on board ship because there would be a reduced number of positions available for their reassignment to non-combat duty. That would clearly be discriminatory against men—unless all persons who serve on combat duty are released from service in a shorter period of time. This same situation applies to the Army, Navy, Marine Corps, Air Force, Merchant Marine and the Coast Guard.

(2) Effect of equal rights amendment on right of privacy

Separate units for women will, I believe, be abolished just as separate ethnic and racial units in the Armed Forces have been abolished—both men and women will serve in the same units. What privacy women will be able to be afforded, if any, is uncertain. The Department of Transportation has already published in the Federal Register its notice of proposed rule-making to amend Coast Guard regulations to allow female members of the crew to use washrooms and toilet rooms that are used by male crew members. This, I believe, is indicative of the future if women are subjected to the draft.

(3) Additional costs of military service of women under equal rights amendment

I have requested of the Department of Defense an estimate as to what additional costs, if any, would be involved were women required to serve in all positions on an equal basis with men in the military service.

The Department's response, in a letter dated March 13, 1972, states, in pertinent part:

"The Department has not made such estimates and without specific programs for such 'equal' service, it is impossible to make any estimate. One of the major areas that would contribute to increased costs would be separate facilities, both in terms of living quarters, as well as working facilities in areas where women are not currently stationed.

"Until a definitive plan is developed indicating where and under what circum-

stances women would serve in isolated areas, with combatant forces, aboard ships, etc., it is not possible to make a definitive estimate of costs. If extensive additional facilities or modifications to current facilities were required, the costs could be considerable."

As responsible Legislators, I feel we should have some definite indication as to what additional costs will be involved if the proposed amendment in its present form becomes part of our Constitution.

E. CONCLUSION

I voted in the Judiciary Committee to report out the Equal Rights Amendment.

However, for all the above set forth reasons, I am not ready or willing to support compulsory military service. If and when an all-volunteer military force comes into being, of course those women who wish to volunteer and serve in the field or on board ships may do so. But, so long as we have a draft law, I intend to vote to exempt women from compulsory military service, and to support such modification of the Equal Rights Amendment.

With this reservation, I give my fullest support to the Equal Rights Amendment and will do all possible to introduce necessary legislation to eliminate other differing treatment afforded men and women under our Federal laws.

Mr. BYRD of Virginia. Mr. President, will the Senator from Indiana yield to me for 3 minutes?

Mr. BAYH. I yield.

Mr. BYRD of Virginia. Mr. President, I shall vote in favor of House Joint Resolution 208, the equal rights amendment for women.

I share many of the concerns voiced by the distinguished senior Senator from North Carolina. I voiced those concerns by supporting clarifying amendments.

I think we would have had a better package to send to the States to consider as a constitutional amendment had clarifying amendments been adopted, but the majority of the Senate felt otherwise.

I would like to see more women interested in politics. I would like to see more women taking an interest in government. I think women can make many contributions to government. They can bring an idealism to government that is badly needed.

I would like to see more women in the Senate and in the House of Representatives. I would like to see more women in the State legislatures. I would like to see more women in the Cabinet of the United States and in high positions in the executive branch of Government. Yes, I believe women can make a great contribution.

As I mentioned earlier, I have some concern about the broadness of this constitutional amendment, as does the senior Senator from Kentucky, which he just voiced. I think it would have been a better proposal had clarifying amendments been agreed to, but I nevertheless shall vote in favor of House Joint Resolution 208.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. I yield back the remainder of my time.

Mr. ERVIN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the joint resolution. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. EASTLAND. Mr. President, on this joint resolution, I have a pair with the Senator from Arkansas (Mr. McCLELLAN) and the Senator from Florida (Mr. CHILES). If they were present and voting, they would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Florida (Mr. CHILES), the Senator from Washington (Mr. JACKSON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Washington (Mr. JACKSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. PACKWOOD) would vote "yea."

The yeas and nays resulted—yeas 84, nays 8, as follows:

[No. 122 Leg.]

YEAS—84

Aiken	Fulbright	Muskie
Allen	Gambrell	Nelson
Allott	Gravel	Pastore
Anderson	Griffin	Pearson
Baker	Gurney	Pell
Bayh	Harris	Percy
Beall	Hart	Proxmire
Bellmon	Hartke	Randolph
Bentsen	Hatfield	Ribicoff
Bible	Hollings	Roth
Boggs	Hruska	Saxbe
Brock	Hughes	Schweiker
Brooke	Humphrey	Scott
Burdick	Inouye	Smith
Byrd, Va.	Javits	Sparkman
Byrd, W. Va.	Jordan, N.C.	Spong
Cannon	Jordan, Idaho	Stafford
Case	Kennedy	Stevens
Church	Long	Stevenson
Cook	Magnuson	Symington
Cooper	Mansfield	Taft
Cranston	Mathias	Talmadge
Curtis	McGee	Thurmond
Dole	Metcalf	Tower
Dominick	Miller	Tunney
Eagleton	Mondale	Weicker
Ellender	Montoya	Williams
Fong	Moss	Young

NAYS—8

Bennett	Ervin	Hansen
Buckley	Fannin	Stennis
Cotton	Goldwater	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Eastland, against.

NOT VOTING—7

Chiles	McGovern	Packwood
Jackson	McIntyre	
McClellan	Mundt	

The PRESIDING OFFICER (Mr. ROTH). Before announcing the result, the Chair would like to remind the occupants of the galleries that no demonstrations are permitted under the rules of the Senate. The Chair respectfully requests that the galleries comply with that request.

On this vote the yeas are 84, the nays are 8. Two-thirds of the Senators present having voted in the affirmative, the joint resolution is passed.

[Demonstrations in the galleries.]

Mr. BAYH. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. PASTORE, Mr. COOK, and other Senators moved to lay the motion on the table.

The PRESIDING OFFICER. The question is on the motion to lay on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. There will be order in the Senate.

The Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that we—

Mr. BYRD of West Virginia. Mr. President, we cannot hear the Senator. May we have order?

The PRESIDING OFFICER. The Chair once again requests that the Senate and the galleries be in order. The majority leader has an important announcement to make, and we cannot hear him.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Calendar No. 356, Senate Joint Resolution 150; Calendar No. 660, Senate Joint Resolution 8; and Calendar No. 661, Senate Joint Resolution 9, all companion measures to the legislation just passed, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE INTERVENTION IN SUPREME COURT PROCEEDINGS ON THE SPEECH AND DEBATE CLAUSE OF THE CONSTITUTION

Mr. MANSFIELD. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 670, Senate Resolution 280, the so-called Ervin resolution, so that it may become the pending business.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 280) authorizing Senate intervention in the Supreme Court proceedings on the issue of the scope of Article I, Section 6, the so-called speech and debate clause of the Constitution.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. MANSFIELD. Mr. President, what this means is that as far as the distinguished Senator from North Carolina is concerned, he still gets no respite, because he will have to take the lead in trying to make clear the significance of this resolution.

PROGRAM

Mr. MANSFIELD. Mr. President, if I may have the attention of the distinguished acting minority leader, I should like to state to the Senate, in better form, what the schedule will be.

When Senate Resolution 280 is disposed of, hopefully this evening, or, if

not, tomorrow, the Senate will proceed to the consideration of the bill dealing with equal broadcasting time, which will be handled by the distinguished senior Senator from Rhode Island (Mr. PASTORE). It will be followed by the egg bill, and may I say that in referring to the excess hens somewhat earlier, I was referring to a term that has come up known as henocide, and I have checked the various records, which bear out my statement.

Following the egg bill, the items on the calendar which have to do with changing the name of Cape Kennedy to Cape Canaveral and to establish the Gulf Islands National Seashore will be taken up tomorrow or Friday, together with naval vessel laws and Radio Free Europe.

The act to extend the Export Administration Act will come down on Tuesday, along with the bill amending the Federal Aviation Act with respect to civil air carriers. The War Powers Act will be laid down that day, hopefully, and debate will begin. The legislative appropriation bill may well be taken up on Tuesday.

For the information of the Senate, there will be no session on Monday, the reason being that seven of our colleagues will be in Denver on official business. After talking it over with the leadership on the Republican side, we have come to the conclusion that it is only fair that this group be given that consideration. Furthermore, in relation to that, the calendar is in fairly good shape. Does the distinguished acting Republican leader agree?

Mr. GRIFFIN. Yes; I agree, and I think that is very considerate of the majority leader.

Mr. MANSFIELD. Of the joint leadership.

That is it, Mr. President.

Mr. MOSS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MANSFIELD. How long?

Mr. MOSS. About 2 minutes.

Mr. MANSFIELD. Very well. Make it 1 minute.

OBJECTION TO REQUEST FOR CHANGE OF REFERENCE OF S. 2032, TO AMEND THE HATCH ACT

Mr. MOSS. Mr. President, on June 9, 1971, I introduced S. 2032, a bill aimed at long overdue reform of the so-called Hatch Act, which has been governing the political activities of Federal employees since 1939.

At the time I introduced this legislation, it was referred to the Committee on Rules and Administration. Today, however, I am informed by Senator CANNON, who is chairman of its Subcommittee on Privileges and Elections, that because the Hatch Act provisions do not affect elections per se, but only the activities of the Federal employees in those elections, he would have no objection to having S. 2032 re-referred to the Committee on Post Office and Civil Service.

His position on this matter agrees with that of the Rules Committee chairman. On Monday, Senator JORDAN indicated that another Hatch Act reform measure, introduced by Senator McGEE, would

most appropriately be referred to the Committee on Post Office and Civil Service.

Mr. President, since the Committee on Post Office and Civil Service, of which I am a member, is most deeply concerned with Federal employee issues, I ask that S. 2032 be re-referred to this latter committee, where it can be considered along with other proposals to liberalize the Hatch Act. I believe this would greatly facilitate Senate action on long overdue reform of laws which continue to deny over 3 million Federal employees any responsible role in our democratic processes.

Mr. GRIFFIN. Mr. President, I object. The PRESIDING OFFICER. Objection is heard.

SENATE INTERVENTION IN SUPREME COURT PROCEEDINGS ON THE SPEECH AND DEBATE CLAUSE OF THE CONSTITUTION

The Senate continued with the consideration of the resolution (S. Res. 280) authorizing Senate intervention in the Supreme Court proceedings on the issue of the scope of article I, section 6, the so-called speech and debate clause of the Constitution.

Mr. ERVIN. Mr. President, this resolution recognizes the fact that the Supreme Court case which is to be reviewed on writs of certiorari, which is concerned with certain legislative activities of the junior Senator from Alaska (Mr. GRAVEL), presents a question of grave moment to the Senate in respect to the meaning and the scope of the speech and debate clause set out in article I, section 6, of the U.S. Constitution.

As is well known to the Senate, the distinguished Senator from Alaska read, at the time this case arose, certain extracts from the so-called Pentagon Papers at a session of a subcommittee of which he was chairman. The Senator from Alaska was acting in the execution of his office as a Member of the U.S. Senate.

After that event, an aide of the Senator from Alaska was summoned before a grand jury sitting in the city of Boston, and an effort was made on the part of the Government to examine the aide of the Senator from Alaska in respect to the action taken by the Senator from Alaska on the occasion which I have mentioned.

This was recognized by the Senator from Alaska to raise a grave constitutional question under article I, section 6, the speech and debate clause, and so he intervened in the proceedings before the grand jury in Boston, and asked that the subpoena for his aide be quashed, or, in lieu thereof, that the scope of the questions which would be put to the aide be restricted so as to prevent any inquiry being made by the grand jury in respect to the action of the Senator from Alaska in the execution of his office as Senator.

The speech and debate clause provides, in substance, that no Member of Congress can be required to answer for anything he says in a speech or debate in any other place, that is, otherwise than in the Congress itself.

This privilege is given to Senators and Representatives because of the experience of Members of the British Parliament prior to the independence of this Nation. They had a situation in which Members of the British Parliament were actually prosecuted and punished at the insistence of the Crown for daring to speak their honest views on the floor of the House of Commons.

Mr. President, this privilege is not given to a Senator or a Representative for his own benefit. It is given to Senators and Representatives for the benefit of the Nation.

It is recognized that it is essential for Senators and Representatives to have an absolute privilege to say in speech and debate anything which they feel their duty to their country requires them to say. They are given this privilege or this right for the benefit of the Nation, in order that the Nation may have the benefit of courageous action on the part of those who are our lawmakers.

While the provision of the Constitution is restricted by the terms to speech and debate, it has been recognized by the decisions of the Supreme Court that this privilege extends to every activity taken by a Senator or a Representative in the execution of what he conceives to be the duties of his office, even though the matter is not connected with something which is germane to the action of the House of which he is a Member.

It is absolutely essential that this be so, because, as we know, a large part of the labor of each Member of Congress is done in committee. So the privilege is not restricted to the floor of the House of which the Member is a Member. It extends to any of his official actions, and it is not required that his action to which the privilege extends shall be germane to any matter pending before the House or before the committee of which he is a Member. This is essential, for without this right, the privilege or right would amount to nothing. A Senator or Representative, who is elected to Congress, if he disagrees—as he would have a right to do and as he might conceive it to be his duty to do—with the majority of the other Members of the House of which he is a Member, would be denied this privilege if the privilege could be exercised only in respect to a matter which was germane at the moment to some business pending before the Senate or the House or a committee of the Senate or the House.

Otherwise, an individual Senator or an individual Representative could be robbed of the privilege in its entirety. This is a privilege which is given to a Senator and a Representative, and it protects no matter how much his action may be disapproved of by the other Members of the House of which he is a Member. This is essential in order to make the privilege or the right of any value whatever.

I have no reference to the distinguished Senator from Alaska in saying this, but I think that the right which arises out of the speech and debate clause of the Constitution is intended to protect every Member of the Senate and is even intended to allow a Senator or a Representative—to put it in plain English—

to make a damn fool of himself. It is necessary that this be so if the American people are going to have the courageous and the honest representation which they are entitled to have in Congress.

The Senator from Alaska, in the judgment of the Senator from North Carolina, has been fighting a fight which is essentially a fight on behalf of the Senate of the United States. When his aide was called to testify before the grand jury, he rightly intervened in his aide's behalf and pointed out to the Federal district court, and subsequently to the circuit court of appeals of that circuit, that if the courts are going to take note of the realities of the situation, the courts are bound to conclude that it is impossible, in the present state of duties which devolve upon a Senator, for a Senator to act without the assistance of his aides.

The Government took a peculiar position in the matter originally and took the position—according to the brief I have read—that it not only had a right to summon the aide of the Senator from Alaska to testify before the grand jury but also had the right to subpoena the Senator, himself—a position which is clearly untenable.

This matter has been heard on appeal by the court of appeals of that circuit, and the court of appeals has handed down a very fine decision. The court of appeals recognized the position taken by the Senator from Alaska that it is essential that this privilege extend to the Senators' aides, insofar as the Senators' aides are acting at the instance of the Senator and the Senator is acting within the execution of his office. This was an extension of the recognition of the privilege beyond what had been recognized in the previous decisions of the Supreme Court of the United States.

This case, which is being reviewed on writs of certiorari applied for both by the Department of Justice and by the Senator from Alaska, presents squarely the question as to whether or not this right or privilege, secured by article I, section 6, of the Constitution, extends to the aides of Senators.

It is essential, it seems to me, for the Senate, as an official body, to make an appearance in this case as an amicus curiae and insist that the Supreme Court accept the interpretation based upon article I, section 6, by the court of appeals in a most enlightened opinion.

There also are other questions which should be debated and presented to the court for its consideration; namely, the question as to what extent a Senator has the power to inform the public about matters in which the public has a grave concern. Certainly, the public has had no graver concern in recent years than its concern in respect to the war in Southeast Asia.

I am constrained to say that the position of the Senator from North Carolina and the position of the Senator from Alaska in respect to the war in Southeast Asia are about as divergent from each other as are the views of any other two Senators on that particular matter. But I think it is essential for us to present to the court the position that the Supreme Court should adhere to the very wise opinion and decision made by the court

of appeals in respect to the extension of this privilege of the Senator to the aides of the Senator when acting within the course of the Senator's orders and the Senator has acted within the execution of his office.

I also think it is necessary to try to persuade the court to make some decision with respect to the question of what actions a Senator can take to inform the public about public questions in which he feels a great concern; that is, the question of publication.

We have no authoritative decision of the Supreme Court which settles the last question. When we take the position that the privilege must necessarily be extended from the Senator to the aide who assists the Senator in the execution of his office, we are merely asking the court to accept reality, because that is the way Senators function. When we ask that the court make some definite decision on the question of the extent of the right of a Senator to undertake to inform the country of matters in which he has a deep interest—that is, public matters—I think we are also taking note of reality.

Those of us who sit in the Senate day after day know that it is extremely difficult to get the attendance of Senators, with their manifold duties, to hear debates on the floor of the Senate, and that one of the ways in which we can reach Senators and bring conviction to them about the soundness of our views is to get the news media to take note of those views, and in that way indirectly inform the other Senators of the views we entertain and give them an opportunity to weigh their soundness.

This resolution would authorize the filing of an amicus curiae brief on behalf of the Senate, to present the questions to the Supreme Court. It recognizes, in effect, that the Senator from Alaska has, thus far, been fighting a battle which is essentially the battle of the Senate, insofar as it involves the extent of the privilege based on the right of the speech and debate clause in the Senate. It contains a provision that would let the Senate finance out of its contingent fund the cost of the Senator from Alaska going to the Supreme Court but not the expenses accrued prior to that time.

I sincerely trust that the Senate will adopt the resolution because I consider that the adoption of the resolution is necessary to protect the prerogatives of the Senate and the prerogatives of every Senator.

I would say that the resolution expresses the claim that its adoption by the Senate will not be construed to be the expression of any opinion as to whether the Senator from Alaska, whose conduct is involved in this case, was wise or foolish; but it does recognize that it is essential for the Senate to see that this prerogative of Senators is protected to the fullest extent that the Constitution permits.

Mr. PASTORE and Mr. SAXBE addressed the Chair.

The PRESIDING OFFICER (Mr. BENTSEN). The Senator from Ohio is recognized.

Mr. SAXBE. Mr. President, first, I should like to state that not only do I have an argument but I also have sev-

eral amendments which are now at the desk. It is my intention to ask for roll-call votes on the amendments as well as a rollcall vote on the resolution itself.

I should like to make it perfectly clear that there is no opposition as to the purpose of the Mansfield-Ervin resolution. I have listened to what the Senator from North Carolina has just said, and I agree, and I think the minority agrees also, that the Senate as a whole should be represented at the Supreme Court by the filing of an amicus curiae brief. We oppose only the provision which authorizes the expenditure of public funds to provide for the legal expenses of the Senate and the junior Senator from Alaska.

Mr. President, the relevant facts and procedural history of this case began June 29, 1971, when the Senator from Alaska unsuccessfully attempted to insert into the CONGRESSIONAL RECORD a classified study prepared by the Department of Defense popularly called "The Pentagon Papers." Not being able to accomplish his purpose before the entire Senate, he convened the Subcommittee on Buildings and Grounds, of which he was chairman, of the Senate Public Works Committee. And, even though the documents bore an overall defense security classification of top secret sensitive, he began at midnight on the 29th to read aloud extensive portions of the study. At the close of the subcommittee hearing, and when he could read no longer, the Senator from Alaska placed the entire study, comprising some 7,000 pages of material in 47 volumes, into the public subcommittee record.

The question of whether the subcommittee meeting was legal I want to raise in passing, but I think the circuit court of appeals has taken care of that to our satisfaction. Needless to say, the fact that the subcommittee meeting was called after the offices were closed and notification was given by slipping a note under the doors of the members of the subcommittee after the offices were closed, certainly is not in the spirit or intent of the committee rule then existing.

I might further raise the point that the new rules of the Senate which have been adopted by the Committee on Public Works would not permit this, but at that time those rules had not been adopted. They were adopted shortly thereafter. The questionable nature of calling of this subcommittee meeting will not be an important element in the amicus curiae brief before the Supreme Court.

Returning to the facts of the case, the Senator from Alaska contacted the Institute for Policy Studies here in Washington sometime on June 29 for the express purpose of obtaining someone to edit the record containing the Pentagon papers. Dr. Leonard S. Rodberg, a physicist and resident fellow at the institute, reported to the Senator's office, and was immediately placed on his staff. Dr. Rodberg received no compensation from the Senate, but was cloaked with all other indicia of Senate employment. He immediately went to work for the Senator from Alaska, editing the transcript of the subcommittee hear-

ing after he had assisted the Senator at the subcommittee meeting. Dr. Rodberg is still on the Senator from Alaska's staff.

After the committee transcript containing the Pentagon papers was prepared, Dr. Rodberg assisted the Senator from Alaska in negotiating with several publishing firms for private publication of the study. An agreement was ultimately concluded with Beacon Press of Boston to publish a four-volume work entitled "The Senator Gravel Edition of the Pentagon Papers: The Defense Department History of Decisionmaking on Vietnam." Beacon Press is the publishing arm of the Unitarian Universalist Association.

On August 24, 1971, Rodberg received a subpoena from a Federal grand jury in Boston. And, the Unitarian Universalist Association received two subpoenas duces tecum which were withdrawn because of a stay order in the lower court. Rather than appear as a witness before the Federal grand jury, Dr. Rodberg filed a motion to quash the subpoena in the Federal district court. The Senator from Alaska was allowed to intervene in this litigation and argued that Dr. Rodberg, as his legislative aide—which the Senator from North Carolina (Mr. ERVIN) has just referred to—was protected by the speech or debate clause of the Constitution from any inquiry regarding the Senate subcommittee meeting or his efforts on behalf of the Senator from Alaska to publish the Pentagon Papers.

The district court denied the motion to quash but said:

No witness before the Grand Jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971, nor about things done by the Senator in preparation for and intimately related to said meeting.

Also, the court stated:

Dr. Leonard S. Rodberg may not be questioned about his own actions on June 29, 1971 after having been engaged as a member of Senator Gravel's personal staff to the extent that they were taken at the Senator's direction either at a meeting of the Subcommittee on Public Buildings and Grounds or in preparation for and intimately related to said meeting.

The district court's opinion also stated that the arrangement for private publication of the study by Beacon Press was not within the Senator's constitutional privilege and therefore Dr. Rodberg could not refuse to testify before the grand jury concerning publication. While the Senator from Alaska was seeking modification of the district court's order, a grand jury subpoena was also served on Howard Webber, editor of the Massachusetts Institute of Technology Press, with which ultimately unsuccessful negotiations for publication took place. This subpoena was also stayed by a supplemental order from the court of appeals.

Both sides appealed. The first circuit court of appeals held:

No witness before the Grand Jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971, nor if the questions are directed to the motives or purposes behind

the Senator's conduct at that meeting, about any communications with him or with his aides regarding the activities of the Senator or his aides during the period of their employment, in preparation for and related to said meeting." The Court further held that "Dr. Leonard S. Rodberg may not be questioned about his own actions in the broadest sense including observation and communications oral or written, by or to him, or coming to his attention while being interviewed for, or after, having been engaged as a member of Senator Gravel's personal staff to the extent that they were in the course of his employment."

The court also rested its decision on a common law privilege that prevents questioning the legislative aide, instead of relying on constitutional immunity. Finally, the court of appeals dealt with private, third parties, recognizing that they could be asked certain questions concerning their own conduct regarding the publication of the Pentagon Papers.

Senator GRAVEL and the United States both sought and were granted writs of certiorari by the Supreme Court. On the merits, the court will consider the following questions:

First. Is the publication of the public records of a congressional subcommittee protected by the Constitution from judicial inquiry; that is, can the executive branch use the subpoena and contempt powers of the judicial branch to test legislative activity;

Second. Are personal Senate aides and third parties—here Beacon Press—assisting in the informing function of the Member of Congress protected from judicial inquiry;

Third. Can a court inquire into the procedural regularity of a Senate subcommittee hearing or is this strictly the function of the legislative branch; and

Fourth. Did the circuit court err in relying upon the common law immunity for Senators and aides established for the executive branch rather than the constitutional immunity contained in article I, section 6.

The fact pattern which I have previously enumerated makes it obviously clear that the junior Senator from Alaska abused scope of "legitimate legislative activity" when he convened the Subcommittee on Buildings and Grounds of the Public Works Committee. Even though he may have complied with the "letter of the law" insofar as following required procedures for convening the subcommittee is concerned, it is clear that there is no acceptable rationale for a review and rendition of the "Pentagon Papers" before that particular subcommittee. Consequently, how can the Senate as a body now authorize and obligate itself to pay the legal expenses incurred as a result of the cause of action which directly arose out of the abuse of the rules surrounding this incident? It is, to say the least, a non sequiter.

Second, to assume now the legal expenses of the Senator from Alaska, as this resolution provides, would establish a dangerous precedent. That precedent would enable any one Member of the Senate to effectively bind the Senate as a body to authorize payment of legal expenses merely by the act of intervening in a lawsuit whenever he chose to do so. I do not believe it is the desire of this body to place ourselves in that position.

Further, to allow now for the fees of private counsel is not warranted. Surely we who make the laws are qualified to fashion our own legal arguments before the Supreme Court, which in turn is charged with the obligation to interpret those laws.

Finally, the Senate recently has on two occasions authorized the retention of and payment for private counsel. Those two cases, Dombrowski against Eastland and McSourley against McClellan, clearly establish the proposition that the Senate should only assume the legal expenses when one of the Members has been sued and must answer as a defendant. This is not the case before us now. Here we have a situation where a Member has intervened in a preexisting legal action. Now it might be argued that the junior Senator from Alaska had no choice but to intervene. This is not so. He clearly had the option to intervene or not to intervene, and his intervention in no way altered the basic question of the interpretation of article I, section 6, of the U.S. Constitution which is now before the court. To maintain that his intervention was necessary to protect the Senate's interest cannot be supported. If such were the case then why do we find it necessary to be debating this resolution which provides for the Senate to file our own amicus brief?

We can only conjecture as to the reason for his intervention. Was it to pay Dr. Rodberg's expenses, or was it at the time to keep alive the issue of the Pentagon papers when interest was beginning to die? I cannot help feeling that it was an attempt to keep alive something which at that time was an extremely controversial issue.

Again I say to the Senate that our interests in article I, section 6, are the same. We wish to protect the immunities which we enjoy in this body, conferred years ago against incursions of the executive and judicial into the narrow field of legislative immunity.

However, in this particular case I cannot help feeling that this is primarily an in-house situation that we as Senators should have settled on the floor of the Senate.

Certainly it was a violation of the spirit of the Senate, and it was a violation, while not perhaps of the rules which did not exist at that point, but certainly of the orderly and mannerly procedure we have been following over the years.

The frustration over not being able to read the Pentagon papers on the floor of the Senate must have been great. The Senator then called a meeting of the Subcommittee on Buildings and Grounds. I have here a selected area set out for the Committee on Public Works, and nowhere does it, by any stretch of the imagination, go to an issue such as this. Then he issued an order which obviously could not have been successful without members of that subcommittee, and then proceeded to read classified and secret material for the sole purpose of publishing it in a yet-to-be selected paper.

I cannot help feeling that it is an embarrassing incident for the Senate and an embarrassing incident that we should police ourselves. Obviously, there is little interest in so doing, but I think we can

show our indignation and our contempt for such procedures by not bailing out the Senator from Alaska at this point.

The Senator from North Carolina referred to the question of paying only those fees that are prospective. I find nothing in the resolution which states that they are only prospective; and I find nothing in it which would limit the amount of the fees.

In an effort to determine the amount of the fees, we contacted counsel representing the Senator from Alaska and asked if they would give us an indication. The answer was, "Well, it is not substantial; but then it is not insubstantial." We asked "Is it over six figures?" They answered "It will probably be less than six figures."

I would say that would mean that \$99,000 is less than six figures. This is as much as we could get on it.

Nobody has discussed expenses for the Senate's representation. Amendments I have at the desk will go to this question. But then, again, a committee of Senators is proposed in the resolution. There is no number, no question of bipartisanship, and it gives them no power to negotiate this matter.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. MANSFIELD. There were sums bruited about in the policy committee. We had before us for that purpose the Senator from North Carolina (Mr. ERVIN), whom I look upon as the outstanding constitutional lawyer in this body. Some of the figures bruited about were—and I stand to be corrected—between \$20,000 and \$25,000.

Second, the policy committee did consider a committee of Senators equally divided between the two parties, but the final decision was that only one Senator would be appointed from our side, and he would be the distinguished Senator from North Carolina. All of this was predicated on bringing the matter to the attention of Republican Senators, so they would be able to give us the benefit of their judgment. If they decided to join us, fine; if they did not, that was their privilege.

So we did discuss these matters. If a Senator is selected from our side, he would be the Senator from North Carolina (Mr. ERVIN) only; and if any money is to be expended, the figure I heard suggested was between \$20,000 and \$25,000.

I make this statement to the Senate for its information.

Mr. SAXBE. Did the Senator contemplate that figure to be for representation of the Senate as a body, or did that amount include both the Senate representation and fees to counsel for the Senator from Alaska?

Mr. MANSFIELD. As I gather—and I am not a lawyer—it included the fees the Senator from Alaska might incur in relation to this process from here on out. I understand the briefs have to be filed by April 7, but it was primarily—and again I wish the Senator from North Carolina would corroborate this or correct me if I am wrong—for the use of outside counsel and advice to help representatives of the Senate in appearances before the court. Is that correct?

Mr. ERVIN. Yes; that is the way I un-

derstand it. No action was definitely taken, but that was the consensus in the matter.

Mr. MANSFIELD. The brief has to be filed April 3 or 4 rather than April 7.

Mr. MATHIAS. Mr. President, will the Senator from Ohio yield?

Mr. SAXBE. I yield.

Mr. MATHIAS. Mr. President, I thank the Senator for yielding. I concur with his statement that there is considerable sympathy on this side of the aisle for the basic proposition which has been set forth by the distinguished Senator from North Carolina. The Senate does have a primary interest in these proceedings, and that interest should be represented in an impartial and objective brief that would be filed in an attempt to lay out the constitutional law on this very difficult subject.

Scholars in recent years have been talking about the twilight of parliaments, stating that the age of strong legislative arms of government is in fact coming to an end. We see all too often that the executive branch of a government, not only of this Government but also of many other governments, is stronger due to the different kind of world in which we live.

One cause for the increase in the power of the executive branches of government in many parts of the world is the growth of what we in this country call executive privilege. Executive privilege is the claim by the executive branch of government that it has the right and, in fact, the duty and responsibility, in the interests of the country, to withhold information. I think we in Congress have at least tacitly admitted there is such a right because we have failed to press witnesses who have claimed executive privilege.

Clearly the President takes counsel not only within himself but also with his trusted advisers to reach the goal of Government. All of this has led to certain practices on behalf of the executive branch of government which have strengthened it very greatly since the time when the legislature had the right to question anything the executive did.

Concurrently, of course, there have been changes in the legislative branch of Government. The basic constitutional immunity given to legislators by the Constitution of the United States—to allow legislators in the House and the Senate to counsel among themselves freely in open debate for the good of the country—has become inadequate if it is limited to this floor alone because many legislative activities take us away from the floor of the Senate.

It is also inadequate if it is limited to Members of this body alone because we, as well as officials in the executive branch, have found it necessary to have advice and counsel. We should very clearly have that part of our legislative activity covered within the immunities which the Constitution originally gave us.

These are all purposes which existed before the Senator from Alaska called a subcommittee hearing, and I hope they will exist for a long time hereafter. That is our basic governmental proposition dealing with the organic law of the country, and it is in that context, I think, that it demands our attention.

It is the broad, objective view that we seek to present to the court, and not a narrow view based on a single case. In that light I think that, with some amendments which we will propose, we can support the thrust of the resolution presented by the Senator from North Carolina.

Mr. DOMINICK. Mr. President, will the Senator from Ohio yield?

Mr. SAXBE. I yield.

Mr. DOMINICK. I thank the Senator from Ohio.

Mr. President, I have listened to these statements with considerable interest. I also have done quite a lot of work on this particular resolution, with the aid and assistance of my staff. I have consulted with the Senator from Ohio, the Senator from Maryland, and many other Senators. I think that if we are going to take a look at this matter we ought to try to put it somewhat into perspective. First of all, we are faced with the situation in which the Senator from Alaska, as I understand it, is claiming immunity not only for himself and for Dr. Rodberg, who went on his staff the same day the publication occurred but who did not appear on the Senate payroll, but also is claiming immunity for anyone with whom he has discussed the matter, whether he is in or out of government.

So it is a very broad exemption that is being claimed by the Senator from Alaska.

Section 6, article I, of the Constitution says—and I read it in part—that Senators and Representatives shall not only be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same—and I will interpolate here—but also that for any speech or debate in either House they shall not be questioned in any other place.

The Senator's claim is not that he is being questioned in any other place, but that other people are being questioned. They are being questioned not because any charge has been filed against them, but solely in order to secure information for a grand jury to determine whether or not any prosecution is even advisable.

In other words, we are dealing at the moment with a purely hypothetical case where a grand jury has simply been brought together to try to learn what the evidence is and to determine whether any prosecution is even warranted. That is the first situation we are faced with.

The second situation is that apparently no factual questions are involved in this case. As I said a few minutes ago, Dr. Rodberg—and this was pointed out by the Senator from Ohio—was apparently a physicist who was working outside the Senate as a friend, or aide, or assistant, or ideological friend, or whatever it was, with the Senator from Alaska, and was not made an aide except for the specific purpose, so far as I can find out, of assisting in the publication of the Pentagon papers at the subcommittee hearing. This was the Subcommittee on Public Buildings and Grounds of the Committee on Public Works.

The Public Works Committee has jurisdiction—and I read this into the Rec-

ord because it is important—over proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

(1) Flood control and improvement of rivers and harbors.

(2) Public works for the benefit of navigation, and bridges and dams (other than international bridges and dams).

(3) Water power.

(4) Oil and other pollution of navigable waters.

(5) Public buildings and occupied or improved grounds of the United States generally.

(6) Measures relating to the purchase of sites and construction of post offices, customhouses, federal courthouses, and government buildings within the District of Columbia.

(7) Measures relating to the Capitol Building and the Senate and House Office Buildings.

(8) Measures relating to the construction or reconstruction, maintenance, and care of the buildings and grounds of the Botanic Gardens, the Library of Congress, and the Smithsonian Institution.

(9) Public reservations and parks within the District of Columbia, including Rock Creek Park and the Zoological Park.

(10) Measures relating to the construction or maintenance of roads and post roads.

Under no conceivable circumstances does the committee have jurisdiction over a classified defense document called "The Pentagon Papers," no matter how one views it.

There is a rule of the Senate, which perhaps is not totally applicable here, because of the circumstances, but it does provide that should a committee take jurisdiction over a subject matter over which it has no jurisdiction, it is then subject to challenge.

It is very difficult to challenge anything before a one-man subcommittee meeting held at midnight, with no notice of the meeting having been given. But I feel certain, as the Senator from Ohio has said, that if the rules were not flatly broken, they were at least impliedly broken, and most certainly the spirit was violated.

Then we were suddenly faced with this resolution, drawn up and presented to us in our conference on the Republican side. We looked it over, and it seemed to us that it involved us immediately in the question of the activities of the Senator from Alaska about which the Senate had not undertaken any inquiry up to this time; but under this resolution we are being asked to participate with the sponsors of the resolution in authorizing the payment of public funds for the Senator from Alaska as well as for the Senate. It is not just the expenses of the Senate itself which we are being asked to underwrite, but also the expenses of the Senator from Alaska.

I am a lawyer, although I have not practiced since 1961, when I came to Congress. But in my 20 years of experience, expenses, generally speaking, refer to out-of-pocket expenses. They do not necessarily refer to legal fees, but I gather it to be so in this case.

In determining what a legal fee is, any lawyer—I do not care who he is or where he is from—usually delays billing the client until after he has seen what has happened in the case. Therefore, I would

presume the legal fees and the expenses of the Senator from Alaska will be presented after the Supreme Court hearing, and will be considered as a part of the Supreme Court hearing. So to that extent we are already underwriting the work which has been done—very effective work, I might say, from the standpoint of the Senator from Alaska and the Senate—in both the district court and the court of appeals. We will then be faced with a brief and with legal fees on the question of how broad the exemption is in the Constitution in a case in which the Senator from Alaska himself intervened and in a case in which no criminal charge had been leveled, but in which a grand jury was simply trying to find out whether there were any facts sufficient to warrant an indictment.

If we start getting the Senate involved to that extent at the expense of the taxpayer, it strikes me that we are going way beyond the scope of any other Senate involvement. This question was discussed at some length in the Republican conference, a quorum being present; and a resolution was adopted, which I read as follows:

Resolved, That the Republican Conference authorize the Chairman, Senator Smith of Maine, to appoint a committee to perfect and file a brief; that said brief pray the Supreme Court to rule in such manner so as to protect the necessary immunities of the Legislative Branch notwithstanding the misconduct or alleged misconduct of a single Member. No expenditure of taxpayer funds to be authorized.

That was the position that we took in our conference, after we had had some quite spirited debate on the whole subject. Pursuant to that resolution, Senator SMITH did appoint a committee, consisting of the Senator from Ohio (Mr. SAXBE), as chairman, and Senator MATHIAS and myself as the other members. That is one of the reasons why we are on the floor of the Senate today.

But in all conscience, I simply cannot see how the Senate can take the position that we are going to use public funds, not only to take care of the expenses of the Senate itself in its brief to the Supreme Court, but also absorb the expenses which the Senator from Alaska has incurred by intervening in the district court initially. This, to me, simply does not mean that we are operating reasonably or sensibly insofar as the public of the country is concerned.

Having said that, I think the next thing that we ought to take a look at is what will be before the Supreme Court.

I have brought up the questions of fact which I wish had been debated, discussed, and considered at least by Members of the Senate long before this, because I do believe that we ought to take care of our internal situations as best we can, and to do it promptly. But the district court, as the Senator from Ohio has said, has assumed that Dr. Rodberg was an employee, and the Justice Department has not denied that, so that is not an issue.

Second, as I understand it, the question of whether the publication was improper as a result of an unauthorized

committee meeting is also not an issue before the Court. The parameters of the question which have been presented now for discussion before the Court read as follows—

Mr. ERVIN. Mr. President, will the Senator pardon me for an observation on the point he just mentioned?

Mr. DOMINICK. I am happy to yield to the Senator from North Carolina.

Mr. ERVIN. There is a decision of the Supreme Judicial Court of Massachusetts, which was handed down shortly after 1800, and which held that the courts would not inquire into the legality of the proceedings as to which the legislator invokes the speech and debate privilege, and that is recited with apparent approval by Justice Frankfurter in the decision which involved the legislative committee from the State of California in, I believe it was, the Brandhove case. I shall supply the correct citation later.

But the findings of the Court have placed those questions outside the parameters of the matters being heard on these writs of certiorari.

Mr. DOMINICK. I thank the Senator from North Carolina, and I think this helps the record.

In other words, what the Senator and I are both saying is that the questions vital to this case, particularly insofar as the Senate intervention in the Supreme Court is concerned, are not really to be considered because they involve the question of action or inaction of the Senate in regard to the conduct of a Member.

The Supreme Court, in granting certiorari, simply states the questions presented as follows:

(1) Does the constitutional responsibility of a U.S. Senator to inform his constituents and colleagues about workings of government require that his action in publishing an official, public record of a subcommittee of which he is chairman, containing documentary information critical of executive conduct in foreign affairs, be accorded protection as legislative activity under the Speech and Debate Clause?

That is the first point. There is nothing in this question which would bring up the issue, which is what we are talking about, as to whether the subcommittee of which the Senator from Alaska is chairman had any right to review any of these documents whether in secret or in public session. So that apparently is not to be considered.

The second question for discussion is:

(2) Does the Speech and Debate Clause bar grand jury questioning of aides of members of Congress and other persons about matters that may touch on activities of members of Congress which are protected "speech or debate"?

Notice that, again, there is nothing here in connection with the Senator from Alaska; nor is his immunity being questioned. The issue is whether a grand jury can question, not only aides, or perhaps not aides but other persons who are not even connected with the Senator from Alaska except by research that they may have done or by other activities whereby, somehow or other, they may have been connected with him.

The third question is:

(3) Does a senatorial aide have a common law privilege not to testify before a grand jury concerning the private republication of material which his Senator-employer had introduced into the record of a Senate subcommittee?

In other words, here we are not even dealing with the speech and debate clause given as a privilege under the Constitution to Members of the House and Members of the Senate, but a common law right which is being asserted on behalf of aides not to testify before a grand jury.

I gather that the Justice Department is taking the view that no one has any immunity under the speech and debate clause of the Constitution except a Senator himself, and then only for speech or debate on the floor of the Senate. This is their position. It has been their position in the lower courts, and they have been beaten in the lower courts on this point, and are going to the Supreme Court on the same issue.

It strikes me that whatever brief we are filing—and I do not know who is going to prepare it, but I hope that Senator ERVIN will in the light of his unmatched qualifications—will not go so far as to assert that any person contacted by any Senator in any way is exempt from giving testimony before a grand jury or a court. If we go that far, it means that with modern means of publication, either by radio, television, or letters, and with the frank now being used freely by Members of the House and the Senate, everyone is going to be immune from any questioning anywhere in the country. I certainly hope we do not go that far.

I would say again that I think we are here dealing with an extremely sensitive subject. I see absolutely no reason why members of the public, who have not been involved in this matter and who in many cases object strenuously to what Senator GRAVEL and others did, should be saddled with the expense of paying his costs in the lower court. I think it is wrong, and it was for that reason that I was willing to serve on this committee and speak my piece here tonight.

Mr. MANSFIELD. Mr. President, will the Senator yield to me briefly?

Mr. DOMINICK. I yield to the Senator from Montana.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I have been talking with the distinguished Senator from North Carolina, who is carrying the burden of the pending legislation, and the distinguished Senators from Ohio (Mr. Saxbe), Colorado (Mr. DOMINICK), and Maryland (Mr. MATHIAS). I should like at this time to propose a unanimous-consent request: That beginning at the hour of 10:15 tomorrow morning there be a limitation of 1 hour on each amendment and 1½ hours on the resolution.

The PRESIDING OFFICER. Is there objection?

Mr. GOLDWATER. Mr. President, reserving the right to object, I should like to ask the majority leader the status, now, of the so-called War Powers bill. I was told earlier today that it would be taken up next week, maybe Tuesday or

maybe Thursday. I have been told, however, within the last 15 minutes, that as a result of this unanimous-consent agreement it would be taken up on Thursday of this week.

Mr. MANSFIELD. No, no. The best we can say as of now is that it will be taken up possibly on Tuesday. That is a long shot; it may more likely be Wednesday or Thursday, and I am not sure we can finish it by the time we begin the Easter recess at the conclusion of business a week from Thursday. But not this week.

Mr. GOLDWATER. I am very deeply interested in that bill. I also have a son, who is currently in Congress, and who is getting married. I do not wish to turn down my duties to him in deference to my duties here in opposition to that measure. I have to live with him a lot longer than with my fellow Senators.

Mr. MANSFIELD. I know; but may I ask the Senator what Solomon-like answer he would give were he in my shoes?

Mr. GOLDWATER. Well, if I were in the Senator's shoes I would join the Republican Party. [Laughter.]

I would suggest, because this matter is not going to be settled quickly—I think there will be 3 or 4 days of debate on it—that if it could be put off until after Easter, it would serve the Senate better, and we can take care of some other bills that can be taken care of better in the interim.

There is no big hurry about having the war powers bill passed right now. It can pass at any time.

Mr. MANSFIELD. That is correct.

May I say that the joint leadership will do its best to cooperate with the distinguished Senator from Arizona. But I wish he would exercise his usual forbearance—and I say that most seriously—and recognize the position we are in. If we can accommodate him, we will; but it is my impression that the bill will take 3 or 4 days, and I do not think we can finish it before we go out on a 2-day Easter recess beginning at the conclusion of business a week from tomorrow.

Mr. GOLDWATER. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The unanimous consent agreement reads as follows:

Ordered, That effective at 10:15 a.m. on Thursday, March 23, 1972, during the further consideration of S. Res. 280, a resolution authorizing Senate intervention in the Supreme Court proceedings on the issue of the scope of article I, section 6, the so-called speech and debate clause of the Constitution, debate on any amendment shall be limited to 1 hour, to be equally divided and controlled by the proponents of the amendments and the Senator from North Carolina (Mr. ERVIN). *Ordered further*, That debate on the resolution be limited to 1½ hours to be equally divided and controlled by the Senator from North Carolina (Mr. ERVIN) and the minority leader or his designee.

Mr. MANSFIELD. This agreement will not become effective until the hour of 10:15 tomorrow. There will be no morning hour for the conduct of morning business. There will be three speeches, however. So what will be said tonight

will be to lay the foundation for the discussion which will be resumed tomorrow.

I hope that Senators who want to speak on the matter will do so, because I should like to read the *Record* in full before we get back on the resolution tomorrow morning.

There will be no more votes tonight.

Mr. BROCK. Mr. President, will the Senator yield?

Mr. DOMINICK. I yield.

Mr. BROCK. I should like to take this opportunity to clarify a couple of points.

The Senator from North Carolina, the Senator from Montana, and the Senator from Ohio were discussing the matter of fees. Perhaps the Senator from Ohio or the Senator from North Carolina can tell me whether or not he has any assurance from the Senator from Alaska or his counsel as to the amount of the fees which might be anticipated under the resolution.

Mr. SAXBE. I believe the Senator heard what I said about the matter. We made a diligent attempt to obtain that information in contacting the Senator's counsel, and the nearest they would come to say that it would be less than six figures. But I might add that that certainly is not binding in any way upon this body or upon them.

Mr. BROCK. The Senator from Montana said that he understood the figure might be closer to \$20,000 to \$25,000.

Mr. MANSFIELD. I said that that was a figure which was bruited about. We had nothing to go on to confirm it. It was just a figure taken out of thin air, so it has no validity.

Mr. BROCK. Would the Senator from North Carolina be able to give us any idea of what the fees for the Senate portion of the resolution might be?

Mr. MANSFIELD. I would have to defer to the distinguished Senator from North Carolina for an answer to that question.

The question was whether we could give the Senator from Tennessee any idea as to what fees might be necessary to carry on such a proceeding before the Supreme Court. Is that correct?

Mr. BROCK. Yes.

Mr. ERVIN. I was just in consultation with the Senator from Alaska, and he said that he could inform me in the morning as to what his counsel thought it would be. I would suggest that we await that information, which I think the Senator is entitled to have.

Mr. BROCK. I would appreciate it very much. I would be delighted to wait until morning.

I should like to ask the Senator a further question. I think he would like to assure his constituents, as I would mine, that this action does not constitute an expression of support or even an attempt to condone any action which may have been undertaken by the Senator from Alaska personally.

Mr. ERVIN. The resolution contains a provision at the top of page 3 which reads:

Resolved, That these resolutions do not express any judgment of the action that precipitated these proceedings.

I think that under that reservation it would not.

I do not think it involves a question of whether the Senate approves the action which resulted in this lawsuit. The question is whether the Senate will stand up and fight for its undoubted privileges under the speech and debate clause.

Mr. BROCK. Would the Senator then clarify for me why the resolution has to go to the point of expressing willingness to pay the legal fees of the Senator from Alaska. He has voluntarily sought to be a party to this suit. Why could we not then limit ourselves to paying the fees of the Senate, which many of us could support?

Mr. ERVIN. The answer to that question is simply this: The ability of the Senate to present its views on this point depends upon the ability of the Senator from Alaska to make a presentation of his appeal, because our appeal would be much like a veriform appendix. It would be annexed to his appeal.

The thought of the Democratic Policy Committee was that we should make certain that he would be financially able to present his cause to the Supreme Court. Otherwise, our cause would fall, too.

Mr. BROCK. By this action does the Senator from North Carolina, or the Democratic Policy Committee, endorse every element of the Senator from Alaska's appeal?

Mr. ERVIN. I do not.

I mean no offense at all to the Senator from Alaska, but I invite the attention of the distinguished Senator from Tennessee to a statement in one of the Supreme Court opinions—I believe it was by Justice Brandeis—that some of the greatest constitutional doctrines have been declared in cases which involved people who were not too respectable.

I am not referring to the Senator from Alaska on that point, but it is to illustrate the fact that out of conduct of which we may disapprove sometimes arise decisions which establish great constitutional principles.

Mr. BROCK. I am in favor of great constitutional privileges so long as they are not rooted in something with which I very much disagree.

I have a great caution about asking my constituents in the State of Tennessee to pay legal expenses for an action with which they would disagree.

I raise this point because it seems to me, that the Senate could act fully, properly, and in the public interest in presenting its own case without being involved with the actions of the Senator from Alaska, either by implication or otherwise.

It seems to me that if the Senator says, as he has said, that he cannot in good conscience support the brief or the appeal of the Senator from Alaska as stated, then it is somewhat out of phase with our own responsibilities to ask the people of the country to pay the expenses of that suit. It seems to me that we have every right to protect the prerogatives of the Senate.

Mr. ERVIN. I did not quite say that. I said that I thought the adoption of the resolution authorizing the Senate to file an *amicus curiae* brief did not constitute an endorsement of the action taken by the Senator from Alaska. In fact, that

is exactly what the resolution expressly disclaims.

Mr. BROCK. If the Senate is going to present its own view to the Supreme Court, which it has every right to do, then should it not hire its own counsel? Should we then designate one Member of the Senate to retain counsel for the Senate, because is that not what the Senator has done when he says we are going to pay the legal fees of the Senator from Alaska?

Mr. ERVIN. I am cautious about things like that, because I do not like to hire counsel and have no authority to pay, when no authority exists to pay the fee.

Mr. BROCK. The resolution empowers the Senator from Alaska to retain counsel or to continue paying counsel he already has, and to add additional counsel without limit.

Mr. ERVIN. I do not think so.

Mr. BROCK. I do not see anything in the resolution which limits him.

Mr. ERVIN. I would construe the resolution as allowing the Senate to employ counsel to prepare a brief, not the Senator from Alaska.

Mr. BROCK. I would refer the distinguished Senator to line 6 of page 2, which reads:

Resolved, That any expenses incurred pursuant to these resolutions, including the expenses of the junior Senator from Alaska.

That has no limit, no condition, no criteria. He can hire anybody he wishes, as many as he wishes, at whatever price he wants to pay, and we have no assurance as to what kind of brief is going to be presented. Yet we purport to present it on behalf of the Senate and that the people are going to foot the bill.

Mr. ERVIN. I do not think we would have the authority to tell the Senator from Alaska what kind of brief to file.

Mr. BROCK. I do, if the Senator is going to ask the taxpayers to pay for it.

Mr. ERVIN. It would not work that way because we cannot file a brief for the Senate unless the Senator from Alaska prosecutes his appeal—is proceeding on a writ of certiorari. We do not have to adopt the same position that he takes in his brief.

Mr. BROCK. Does the Senator honestly tell me that the Senate itself cannot submit its own brief before the Supreme Court as *amicus curiae* in this case without referring to the Senator from Alaska at all?

Mr. ERVIN. Yes, because if it were not for the Senator from Alaska's case, there would be no need for the Senate to intervene as *amicus curiae*.

Mr. BROCK. Then, why do we have to participate? Why do we have to pay counsel for the Senator from Alaska when we have our own counsel? That is what I cannot seem to get through to the Senator.

Mr. ERVIN. That is just the point which I understand the Senator from Ohio (Mr. SAXBE) is going to present by an amendment which, I presume, would be to eliminate this matter; in which event, of course, the Senator from Tennessee will be at liberty to vote for that amendment. He would also be at liberty to vote against the resolution in case such an amendment were rejected.

Mr. BROCK. The Senator can count on one thing, and that is that the Senator from Tennessee will support that amendment very vigorously.

Perhaps the distinguished Senator will answer one more question for me: How can I explain to my constituents that because this body, even if it is protecting the interests of the Senate and ultimately the interests of a legislative body, would raise their taxes and levy a fee upon their incomes so as to pay for the actions of the Senator from Alaska and his legal counsel in his defense?

Mr. ERVIN. The Senator from Tennessee has just put to the Senator from North Carolina a most difficult question. Tennessee used to be a part of North Carolina. North Carolina tried to explain things to the people of Tennessee, but the people of Tennessee would not take North Carolina's explanation. Finally, to settle the problems which arose between North Carolina and Tennessee, we gave them to the Federal Government. [Laughter.]

Mr. BROCK. We bless you for that. We have both prospered in the process. My grandfather came from North Carolina. We are proud of that heritage. We have learned from the process. However, the Senator is not responding to my question.

Mr. ERVIN. North Carolina, notwithstanding the fact that Tennessee was sometimes a wayward child, is very proud of her daughter, Tennessee. I think the Senator from Tennessee could explain to the people of Tennessee that here is a case which involves, in a most serious manner, the prerogatives of all Members of the Senate under the speech and debate clause of the Constitution, and that if he votes for the resolution, he can tell his people that he voted for the resolution in order to make it certain that the prerogatives of the Senate were fully sustained insofar as we could do so by persuasion upon the Supreme Court.

Mr. BROCK. I very much respect and admire the distinguished Senator from North Carolina. He is the most able constitutional lawyer in this body. I honor him.

Mr. ERVIN. I appreciate that compliment, but sometimes I think the Supreme Court had such an aversion to approving anything I knew on that subject, that it left me in a state of total ignorance. [Laughter.]

Mr. BROCK. I do respect the Senator from North Carolina, and I respect his statement that great constitutional questions can come from unfortunate situations.

I find the implications of this unfortunate situation of compelling interest at this particular juncture. I find it somewhat difficult to rationalize the first "Whereas," on page 2, which reads:

Whereas this case necessarily involves the right of the Senate to govern its own internal affairs and to determine the relevancy and propriety of legislative activity and the scope of a Senator's duties under the rules of the Senate and the Constitution;

Mr. ERVIN. I will say that I do not have any difficulty with that, although I do not like "whereases" as a proposition. But under the Constitution of the United States, the Senate has the right to dis-

cuss with any Member of the Senate any conduct in which he may engage, which may be in violation or which the Senate might consider to be disorderly. I think that one of the crucial questions involved in this case is: Can a Senator of the United States be required to answer, either directly or indirectly, before a grand jury, for conduct which the Senate alone has the power to deal with? I think that is a very serious question.

Mr. BROCK. I would agree as to the seriousness of the question. I, frankly, would be more prone to follow the leadership of the Senator from North Carolina if the Senate had openly considered this question. But it has not. To my knowledge, no official body of the Senate of the United States has undertaken any action, or made any effort, to investigate the conditions surrounding this case.

Mr. SAXBE. Mr. President, if I might interject a comment, I was informed that the Committee on Public Works, in executive session, did consider the reporting fee, and the chairman and the ranking minority member objected to it. It was not further considered. That is as near an action in this regard that the Senate has taken.

Mr. GRAVEL. Mr. President, will the Senator from Tennessee yield at that point?

Mr. BROCK. I am delighted to yield to the Senator from Alaska.

Mr. GRAVEL. I wonder: Did I hear correctly that there was a reporting bill which was discussed in the Public Works Committee?

Mr. SAXBE. I was told that the reporting fee for the reporting of the subcommittee meeting was presented to the full Committee on Public Works and that it was objected to by the chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), and by the ranking minority member, the Senator from Kentucky (Mr. COOPER), and it was not further considered. No action was taken. Can this be clarified?

Mr. GRAVEL. I believe that the Senator from Kansas (Mr. DOLE), who is now in the Chamber, was one of the Senators at that meeting, and he knows the facts. He knows that a fee was not reported to the committee, but there was a fee which was objected to by the ranking minority member, and I volunteered to pay the fee. Similarly, the ranking Republican member of that committee, the Senator from Connecticut (Mr. WEICKER), also offered to pay the fee. Those are the facts.

Mr. SAXBE. What I referred to was the full Committee on Public Works.

Mr. GRAVEL. That is exactly what I refer to. The Senator from Kansas (Mr. DOLE) was present at that meeting, and if there is any explanation that can be made, it can be made by Senator DOLE.

Mr. BROCK. Perhaps the Senator from Kansas would inform us of the facts surrounding the action by the full Public Works Committee.

Mr. DOLE. Mr. President, as I recall, the meeting was held in executive session on July 8 and there was much discussion; but the final outcome was basically as the Senator from Alaska has indicated, that the question of the re-

porting fee may have been raised but the transcript has never been accepted by the Public Works Committee. The Senator from Alaska did volunteer to pay the reporting fee, and I believe that the Senator from Connecticut (Mr. WEICKER), on his own, and not as a member of a minority on the committee, asked if he might be permitted to pay one-half the fee. Whether he has done that, I am not certain; but there was never any committee action to pay the fee, nor has the transcript of the hearings on June 29 and June 30 been received by the committee.

That is why I am concerned, too, about the language raised by the Senator from Tennessee, on the legislative activity. I wonder, as a Member, if the resolution would not ratify the conduct of any Senator, not try to judge a Senator's conduct, but would, in fact, ratify the conduct of having an unauthorized subcommittee meeting without notice or any minority member being present, and about a subject over which the subcommittee had no jurisdiction.

If that is the case, maybe I can have a committee meeting on whether the Democrat National Committee should pay its telephone bill of \$1.5 million. Then we can go to the Supreme Court and I can ask that the Senate pay for my counsel fees. I do not believe that is the intent of the resolution. I do not believe that I have that right as a Senator to have any hearings anywhere and say: "We will have hearings tonight. Follow me to whatever room I might be able to find," and then have some kind of hearings. Maybe I can after the resolution is adopted.

Mr. MANSFIELD. Mr. President, if the Senator will yield, the Democratic National Committee is not an adjunct of the Senate. There is no Senator on that committee that I know of, and certainly there is no relation to this institution.

Mr. BROCK. Mr. President, what about the Beacon Press? They were very much involved in this case. Are we going to endorse this, and can a Senator by appointment grant immunity to anyone he designates?

Mr. MANSFIELD. Mr. President, may I say, to keep the record straight, that what the Democratic Policy Committee did unanimously, and only after calling in as a special guest the distinguished senior Senator from North Carolina, was to recognize a proposition which did not affect the Senator from Alaska so much as it affected the Senate as an institution and all Senators as individuals, the GRAVEL incident aside.

We immediately got in contact with the distinguished minority leader the same day. They were having a luncheon. We sent word to Mr. Ferris or Mr. Leach so that any questions could be answered so as to indicate that what we were attempting to do would be subject to the approval of the Republicans.

As the distinguished Senator knows, this is not a Democratic proposal, although it is in the form of a resolution introduced by two Democrats. It is a Senatorial proposition, and it affects the Senate as an institution and all Senators as individuals.

I hope we will not get down to the Democratic National Committee telephone bill and whether it is due the A.T. & T., the I.T. & T., or whatever it is, or to the Beacon Press. We are talking about the Senate. That is what counts, and that is the most important factor so far as we as individual Senators are concerned. We're trying to keep aloof the greatness of this institution.

Mr. BROCK. I am making every effort to do that. I revere this body. However, there is a serious question as to whether by paying the counsel fees of the Senator from Alaska in this case we do not in fact endorse whatever brief is filed, and if a Senator could designate some attorney, whether he is on his staff or not, to receive immunity, he would be a party to that and the Senate would be a party to it because it is paying for it.

Mr. DOLE. Mr. President, I did not mean to use that as an example. It just came to my mind. However, it has been on my mind for some time.

Mr. MANSFIELD. It has been on our minds, too.

Mr. DOLE. In any event, I think it raises a very serious question. Do we ratify the conduct of the Senator from Colorado or the Senator from Ohio or the Senator from Kansas? We are not the majority party. I am using ourselves as an example. If we adopt this resolution, will anything prevent me from having a committee meeting tomorrow night?

Mr. ERVIN. The resolution does not deal with a committee meeting.

Mr. DOLE. Suppose I had one.

Mr. ERVIN. It says on lines 1, 2, and 3 of page 3:

Resolved, That these resolutions do not express any judgment of the action that precipitated these proceedings; . . .

I do not know how that could be expressed more clearly. It is not an expression of approval. It is not approval.

Mr. DOLE. We have not been in touch on that issue. However, if some other Senator did something that might be similar to what has been done, we might get in touch with that Senator and discipline him in some way.

Mr. ERVIN. The issue in which we are primarily interested is whether a Senator is to be called on to be questioned in some other place in a court by the executive branch for action taken by him in the execution of his duties.

Mr. BROCK. It is a lot more than that. It is whether he or his political appointees or hirelings or anyone else he selects should be called on.

Mr. ERVIN. The court has passed on the question as to whether Dr. Rodberg was, within the meaning of the law, an aide to Senator GRAVEL. That matter is not involved.

Mr. BROCK. The court has acted. However, has the Senate acted? If the Senate is going to stand up and say before the court: "Let us alone. Grant us total immunity. Give us the right to run our own affairs and police our interests," I think we have a right to do that, if we undertake this action.

Mr. ERVIN. When one gets into court, he has to go on the record whether he likes it or not. The Senator may not like

it. However, it has been found that Dr. Rodberg was his aide. That question is immaterial.

A Senator has the right to seek the assistance of anyone in the performance and execution of the duties of his office. And he cannot be called upon to answer for the exercise of those duties by the examination of any of his assistants that he avails himself of.

Mr. BROCK. If the Senate, through this resolution, were to hire counsel for the Senator from Alaska it would be fair to say then: "You have condoned every action that has been taken." That is the question I was asking before, because we have taken no action of our own.

Mr. ERVIN. I have disagreed with people many times. I have made contributions of money to a man whose conduct I viewed as reprehensible in order to assure that he had a fair trial according to law. I did not endorse his conduct. I just assured him that he would have a fair trial.

Mr. BROCK. The Senator just got through saying that. So why do we pay the Senator's expenses?

Mr. ERVIN. Simply because another branch of the Government can impose on the separation of powers, are we going to sit supinely by and let some other branch of the Government exercise the power that the Constitution gives us to deal with our own Members and let them deal with those Members?

Mr. BROCK. We are sitting supinely by when actions are taken with which a number of Senators disagree and we take no action.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. BROCK. I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I just want to point out in connection with what the Senator from North Carolina is saying that, yes, we are all willing to go in and say that the immunity of a Senator of the United States or maybe even of some of his staff members ought to be protected. However, if we are going to file a brief and if, as the Senator from Tennessee says, any Member can anoint somebody by talking to him or writing to him or asking him for an opinion that is set forth within the parameters of what the Supreme Court is looking at, I for one do not want any part of it.

I do not think the Senate ought to be involved in asking for immunity for themselves or for anyone else.

Mr. ERVIN. I do not think a Senator can anoint anyone under the debate and speech clause except to the extent that the man had been employed in the execution of his duties as a Senator. The question involved in this case is, How far can a Senator go?

Mr. BROCK. Mr. President, will the Senator deny that every voter in Tennessee who voted for me aided me in the performance of my duties by placing me here?

Mr. ERVIN. No. They put the Senator from Tennessee in a position where the Senator from Tennessee acquired the legal capacity to execute the duties of the office of a Senator. They did not aid him in the execution of his duties.

Mr. BROCK. Every time anyone writes me a letter, if I give him personal attention, I can then extend the immunity to him. I do not think there is any divine right.

Mr. ERVIN. If the Senator summons that resident from Tennessee and has him assist the Senator here in the performance of his duties, I think he would be clothed with the same immunity with which the court said Dr. Rodberg was clothed.

Mr. BROCK. Whether he is on the payroll or not?

Mr. ERVIN. Absolutely. That is my position. The question is whether the Senator avails himself of his assistance. The question is whether he aids the Senator in the execution of his office, and not whether he is on the payroll. The question is whether he aids the Senator.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. MATHIAS. Mr. President, I think it would be useful to get this question back within the perimeter of what is practical and what we are really concerned about.

The housekeeping questions within the Senate, I agree totally with the Senator from Tennessee, are the Senate's problems.

If the Senate has doubts and resolves those doubts by action, that is one thing. If it resolves them by inaction, that is the same thing because inaction can speak as loudly as action on occasion.

The point is that those are problems for the Senate to resolve, and neither the courts nor the executive should involve themselves in the internal workings of the Senate. That is essentially what the court in Massachusetts said over 100 years ago. The court will not look beyond the record.

But in this case we have something new, and that is to have the court consider the extent of the immunities conferred under the speech-and-debate clause. This was a subject the Senator from North Carolina will recall was discussed before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. We had among witnesses before the committee the then Assistant Attorney General William Rehnquist, who is now Mr. Justice Rehnquist, and who at that time was in the Office of Legal Counsel. Mr. Rehnquist gave a succinct description of what we are talking about. He was speaking on behalf of the Justice Department in connection with the executive privilege and he said:

The President is entitled to undivided and faithful advice from his subordinates, just as Senators and Representatives are entitled to the same sort of advice from their legislative and administrative assistants, and judges to the same sort of advice from their law clerks. The notion that those engaged in directly advising members of any of the three branches of the government should have their work filtered through a process of analysis and criticism by columnists, newspaper reporters, or selected members of the public before that advice reaches their constitutional superior is entirely at odds with any system of responsible popular government.

I go back and read that statement

again because it is an interesting choice of words. Justice Rehnquist is noted for his careful choice of words:

The notion that those engaged in directly advising members of any of the three branches of the government should have their work filtered through a process of analysis and criticism by columnists, newspaper reporters, or selected members of the public before that advice reaches their constitutional superior is entirely at odds with any system of responsible popular government.

I think in commonsense language that that states the proposition. He is not talking exactly on the point here of bringing a matter before the grand jury, but it is the principle involved here and one about which there is not much dispute in the Senate.

Mr. SAXBE. I compliment the Senator for bringing that matter to the attention of the Senate and returning us to the area we have been discussing.

I started out by discussing our sincere regard for protecting the rights and immunities of the Senate. But the very nature of the acts which are brought into discussion here—and I might say that the full colloquy on this is excellent because it brings up the acts for scrutiny—just does not jibe with the conduct of this body in the procedure of orderly legislative action.

I might add, too, that the Senate itself has recognized this, because since that time the committee, including the Committee on Public Works, has adopted certain rules that obviously require adequate notice. The slipping of notes under doors in the middle of the night and giving the color of legality to an obvious rump meeting is no longer possible. So the Senate has recognized this, but it has recognized it belatedly.

The question of whether the Senate should or should not consider censure for such activity is something that is brought up here on the floor for the first time. In talking about the resolution, we should recognize there are a great many unanswered questions which I hope we can go to directly tomorrow in the matter of these amendments. Then we can take some action, which I feel in many areas the majority can concur with in putting some limits on fees and some control in narrowing the areas, and certainly in seeing to it that the short time remaining is fully taken advantage of.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. MANSFIELD. Any proposals to be offered tomorrow will be given every consideration by the majority.

I would point out that this is not a Democratic or a Republican matter. I would like to make a few observations, if I may, because the one thing we do not want to get involved in here is a political implication, because nothing could be further from the thoughts of the Senate, if it is the thinking of the Senate, than thoughts on politics. I assure the Senator that every proposal made tomorrow will be given every consideration by Members on this side of the aisle.

Mr. SAXBE. If the Senator will yield on that point, the attitude that is pre-

vailing among Members on this side at present, and a great many other people, is that the Senate is unwilling to recognize the dereliction in this particular instance, and that the majority has collected in a protective shield around the Senator from Alaska to carry him through so that he will suffer no harm, no financial damage, and because of what we think was an unwarranted use of a then-existing committee facility he had available to him.

Mr. MANSFIELD. Mr. President, if the Senator will yield, the Senate is the judge of the propriety of the actions of the Senator from Alaska, and the Senate only; not the Supreme Court, not the executive branch, but the Senate, and the Senate only. If the Senate wishes to pay or not to pay the hearing transcript fees of Senator GRAVEL, or to sanction or censure the activities of any Senator, it is for the Senate, and the Senate alone, to decide. That is the issue before us.

Is the Senate as an institution going to be the judge of its own affairs? If any Senator's activities are going to be judged, let the Senate alone be the judge. That is the meaning of the resolution before the Senate.

I emphasize the role of the Senate, not a Democratic-controlled Senate but a Senate made up of Republicans and Democrats who have to make the decisions themselves, and not allow the executive branch or the judicial branch to take unto themselves that which is our responsibility.

Mr. SAXBE. Mr. President, I certainly agree with the basic statements that the Senator has made, but I do not believe the resolution as it stands at present is a fair statement of our attitude. There is a great deal of common ground in the resolution, common ground that both of us can agree on, and I think the whole legislative process at its best—which I hope will operate tomorrow—will shape the resolution in such a manner that we can go together into the Supreme Court to protect those things which we think are always subject to attack.

Mr. ERVIN. Mr. President, I should like to pay tribute to the majority leader. I just told him that the finest constitutional lawyer in America could not have made a better statement of the principle which is involved before us here.

A good many years ago we had turmoil here over the situation of Senator Joe McCarthy. At a later time there was a great deal in the press about the conduct of Senator Dodd. On those occasions the Senate recognized that the Senate alone has the right to judge a Senator for disorderly conduct in his office as a Senator, and nobody else. That is the principle that is involved here, as we see it.

Mr. SAXBE. I know the Senator sees it that way, and it is also obvious that Senators there see nothing wrong in the actions of the Senator from Alaska in what he did in his frustration after not being able to disclose these secret papers on the floor of the Senate. Therefore, we feel that this type of colloquy is extremely important in bringing the actions out, and we think we can better find the common interest in this.

We are talking about days and time, and the fact that the brief has to be printed and filed.

I might say that, on instructions of the Republican conference, we, with what lawyers we have available—I think they are excellent lawyers—have been working on a brief. We think we can do it in-house. In other words, we think we can, with the tremendous level of legal knowledge and experience we have in the Senate, prepare an in-house brief.

Many of us have appeared before the Supreme Court of the United States many times. We think that in this case the issues are clear, as set out in the circuit court of appeals. We want to sustain it. We question whether we can hire better counsel than we can lay hands on here.

Certainly, if we make the laws, we think that we can defend those same laws. However, this is something we can bring up tomorrow in the way of amendment. I truly hope that Senators will look over the amendments, that Senators will be provided with copies, in the hope that we can find a common ground and a common interest.

Mr. ERVIN. I think the Senator from Ohio has just taken a very sensible position. I shall be glad to examine the amendments overnight, if I have copies of them.

Mr. MANSFIELD. Mr. President, I will read this debate with a great deal of interest. It has been instructive as well as constructive. I am glad we spent so much time on this matter, in which the Senate is under consideration as an institution.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. DOMINICK. I wanted to tell the Senator from North Carolina and other Senators, as well, that I shall be preparing three more amendments, other than the ones that are here, but I will not need much time. I hope that when the amendments come up and we get them out of the way, we will not need these at all. I think they can be disposed of in a half hour or less.

Mr. MANSFIELD. I appreciate the remarks of the Senator from Ohio. This will speed up the consideration of the matter—not that we are rushing, but we do have other legislation which the leadership hopes to have completed before the recess begins a week from Thursday.

ORDER FOR RECOGNITION OF SENATOR TUNNEY TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that tomorrow, following the recognition of the distinguished Senator from Minnesota (Mr. MONDALE), the distinguished Senator from California (Mr. TUNNEY) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO PROCEED TO PENDING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of Senator TUNNEY's remarks

there be no morning business or no morning hour and that the Senate proceed directly to the pending resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRECEDENTS FOR PAYING COUNSEL FEES

Mr. ERVIN. Mr. President, before we adjourn, I ask unanimous consent that a statement showing the precedents for the Senate to pay counsel fees be printed in the RECORD.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM

The Republicans will propose amendments to the Gravel resolution which would prohibit the financing of Senator Gravel's legal expenses. However, there are a number of precedents for this provision of the resolution.

During recent history the Senate has, on two occasions, authorized the retention of private counsel to represent Members and staff aides who have been sued in their official capacities when the issues involved in the litigation relate to the privileges of the Congress. In the first case, *Dombrowski v. Eastland*, the Judiciary Committee voted to retain Roger Robb as counsel to represent Senator Eastland and Mr. Sourwine. Upon the request of Chairman Eastland, the Rules Committee authorized payment out of the Judiciary Committee's funds for attorney's fees, expenses and assessed court costs. In the second case, *McSourley v. McClellan* now pending in court, the Permanent Investigating Subcommittee has followed a similar procedure to retain H. Jack Miller to represent Chairman McClellan.

In the Eastland and McClellan cases, the plaintiffs sued because Senate Committee employees carried out the orders of their

Committee Chairman to seize documents and records belonging to the plaintiffs. It was further alleged that the Senators and employees involved had used the Committee processes. In the Gravel case the Department of Justice is seeking to question an aide of the Senator's because that aide carried out the directions and orders of his Senator.

The Justice Department has also claimed that the Senator and his aide used the Committee process for an improper purpose. The only difference between the prior cases and the Gravel case is that Senator Gravel decided to intervene to protect the Senate and himself whereas Senators Eastland and McClellan were sued. However, it now seems reasonably clear that Senator Gravel acted wisely for at the time the subpoena was issued the Senate was not in session and he had only 36 hours within which to act. If he had not moved to intervene, the Senate's vital interests would have been totally unrepresented.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:30 a.m. Senators GRAVEL, MONDALE, and TUNNEY will each be recognized for not to exceed 15 minutes, and in the order stated.

There will be no period for the transaction of routine morning business.

The Senate will then immediately resume its consideration of the Ervin-Mansfield resolution, on which there is an agreement of 1½ hours on the resolution and 1 hour on any amendment thereto.

When that resolution has been disposed of, the Senate will take up S. 3178, the suspension of section 315, equal broadcasting time. Final action is hoped

for tomorrow on the equal broadcasting time bill.

The leadership also hopes to dispose of S. 2895, dealing with egg prices. Moreover, if cleared, the leadership hopes to dispose of Senate Joint Resolution 193, Cape Canaveral, and S. 3153, Gulf Islands National Seashore.

There will be rollcall votes tomorrow, and we may very well have a long day.

ADJOURNMENT UNTIL 9:30 A.M.

Mr. SAXBE. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:30 a.m., tomorrow.

The motion was agreed to; and at 6:35 p.m. the Senate adjourned until tomorrow, Thursday, March 23, 1972, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 22, 1972:

AGENCY FOR INTERNATIONAL DEVELOPMENT

Jarold A. Kieffer, of Minnesota, to be an Assistant Administrator of the Agency for International Development, vice Herbert Salzman, resigned.

U.S. DISTRICT COURTS

Otto R. Skopil, Jr., of Oregon, to be a U.S. district judge for the district of Oregon, vice Alfred T. Goodwin, elevated.

James M. Burns, of Oregon, to be a U.S. district judge for the district of Oregon, vice Gus J. Solomon, retired.

U.S. COAST GUARD

The following named officer of the U.S. Coast Guard Reserve for promotion to the grade of rear admiral:

Charles J. Hanks.

HOUSE OF REPRESENTATIVES—Wednesday, March 22, 1972

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Search me, O God, and know my heart: try me and know my thoughts: and see if there be any wicked way in me and lead me in the way everlasting.—Psalm 139: 23, 24.

Eternal Father, to whom the darkness and the light are both alike in the midst of the troubles of these trying times, worn and weary by worry and work, we turn to the quiet calm of Thy presence. For a moment we would be still and know that Thou art God.

Endow us with insight to understand the needs of our people and help us to work for greater justice in our land, for fuller freedom among the nations and for an enduring peace in our world. May we realize that Thou art our Father, our fellowmen are our brothers, and we are our brothers keepers. With this vision of Thy kingdom may we make our decisions, mold our laws and build our Nation. Thus may we walk from darkness to light, from weakness to strength, from fear to faith and from any ill will to an abiding good will. In the mood of the Master, we pray. Amen.

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THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 904. An act to amend the Uniform Time Act to allow an option in the adoption of advanced time in certain cases.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 3054) entitled "An act to amend the Manpower Development and Training Act of 1962," agrees to a conference requested by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. NELSON, Mr. KENNEDY, Mr. MONDALE, Mr. CRANSTON, Mr. HUGHES, Mr. STEVENSON,

Mr. RANDOLPH, Mr. TAFT, Mr. JAVITS, Mr. SCHWEIKER, Mr. DOMINICK, and Mr. BEALL to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 764. An act to authorize the disposal of lead from the national stockpile and the supplemental stockpile;

S. 773. An act to authorize the disposal of metallurgical grade chromite from the national stockpile and the supplemental stockpile;

S. 1379. An act to authorize the Secretary of Agriculture to establish a volunteers in the national forests program, and for other purposes;

S. 3086. An act to authorize the disposal of nickel from the national stockpile; and

S. Con. Res. 55. Concurrent resolution providing for the recognition of Bangladesh.

HOUSING BOOM CONTINUES TO PACE OUR ECONOMIC EXPANSION

(Mr. WIDNALL asked and was given permission to address the House for 1

minute, to revise and extend his remarks and include extraneous matter.)

Mr. WIDNALL. Mr. Speaker, the unprecedented boom in new home construction accelerated in February. Private housing starts soared 8.4 percent over the previous month, to a seasonally adjusted annual rate of nearly 2.7 million units. This unusually strong advance indicates that the housing sector will continue to be a potent contributor to the economic expansion and provide the new homes so essential to the well-being of this Nation's families.

It is important to put these statistics in perspective. The many record-breaking months of housing construction recently may give some the idea that the housing sector has always been strong. This is, of course, a mistaken impression. Until recently, we have never had a year when housing starts totaled 2 million units. Until recently, we would have to go way back to 1950 to find a month when housing starts reached an annual rate of 2 million.

During the 1960's, housing starts never reached an annual total of even 1.6 million units. In contrast, the total for 1971 is now estimated to be nearly 2.1 million units. February 1972 is the third consecutive month that the level of starts has remained above the 2.4 million unit mark. And the level of permits for new home construction remains at 2.1 million, suggesting that starts will remain strong for many months to come.

It is easy to find bad economic news if one searches hard enough. But the housing sector will give pessimists no consolation. Housing construction has been unusually vigorous. And the signs are that this sector will continue to add strength to the current economic expansion.

HON. OGDEN R. REID WELCOMED TO DEMOCRATIC PARTY

(Mr. HAYS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HAYS. Mr. Speaker, I join with my colleague, the gentleman from Indiana (Mr. BRADEN) and the majority leader in welcoming the conversion of the gentleman from New York (Mr. REID) to the Democratic Party. I have been a friend of OGDEN REID since he came to the House. I think he is a sound, dedicated, hard-working Member. I think he will be a valuable addition to our party.

Might I say this is in great contrast to the mayor of Fun City, who lately converted to the party, Mr. Lindsay. I also knew him when he was here. He served on my NATO Committee. He made absolutely no contribution. He is phonier than a Confederate \$3 bill with Abraham Lincoln's picture on it.

TRIBUTE TO THE LATE LAURENCE E. TIERNEY, JR.

(Mr. KEE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. KEE. Mr. Speaker, at 2:45 a.m. this morning, Mr. Laurence E. Tierney,

Jr., known widely by his friends in "Larry," died at St. Mary's Hospital in Richmond, Va., following extensive and complicated surgery.

Mr. Speaker, Mr. Tierney was a neighbor and very dear personal friend of mine in my home city of Bluefield, W. Va., and he was known as the tower of strength. A man of complete dedication not only in southern West Virginia but throughout a good part of the United States.

Unfortunately, time does not permit me to list his unexcelled positions of responsibility in numerous business enterprises, each one of which grew and prospered under his able leadership. While he retired from many of his business activities, he had the ability to select extremely qualified men to carry on under his most capable direction.

Some time ago, he sold his vast coal interests and at the time of his death, he was chairman of the board of directors of the Flat Top National Bank in my home city of Bluefield. The example he set will long continue to influence and inspire us.

Mr. Speaker, while we are all filled with sadness, I take this opportunity to extend my prayers to Mr. Tierney's family and I have a strong feeling that he will watch over us from his house in the kingdom of heaven.

DRUG ABUSE PREVENTION

(Mr. EDWARDS of Alabama asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EDWARDS of Alabama. Mr. Speaker, yesterday President Nixon signed into law the Drug Abuse Office and Treatment Act of 1972. This bill gives permanent status to the Special Action Office for Drug Abuse Prevention. Under this Office, Government efforts will be coordinated to prevent drug addiction through education, treatment rehabilitation, training and research, and tough law enforcement. The Office will pull together the drug abuse prevention threads which now run independently through 13 Federal agencies. It is my belief that this new approach, coupled with the full cooperation of the Congress and the people, can not only root out the misery peddlers on our city streets, but also provide help to the many victims of this national problem. We must present a balanced attack on this problem. That is, we must move through tough law enforcement against the supply sources for illegal drugs while at the same time moving through strong drug abuse prevention programs against the demand for drugs among our citizens.

We need to fumigate every corner of the breeding grounds for drug addiction. Intense, coordinated efforts such as planned by the Special Action Office for Drug Abuse Prevention will give us a good start on this massive problem.

THE NEWEST CONSUMER FRAUD

(Mr. SMITH of Iowa asked and was given permission to address the House for 1 minute.)

Mr. SMITH of Iowa. Mr. Speaker, I noticed in the newspapers yesterday there were two full-page advertisements by Giant Foods and Supervalu alleging to help the consumer to spend his money better. I was curious, so I went out this morning shopping to the Giant store and the Supervalu store across the road in the 3900 block of Minnesota Avenue. I found as a matter of fact the cost per unit of proteins in the food they are pushing was more than in the food they do not want people to buy. In fact some cuts of meat were as little as one-fifth as expensive per protein unit as pizza, which is the kind of food one encouraged people to buy. These ads constitute an outright consumer fraud. They take the consumer's money to buy an advertisement to mislead the consumer. During a special order today following other business previously scheduled, I am going to detail the facts relative to this newest consumer fraud.

INTEREST RATES ON HOUSING

(Mr. PATMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PATMAN. Mr. Speaker, I join my good friend, WILLIAM B. WIDNALL, from New Jersey, the ranking minority member on the Banking and Currency Committee, in expressing appreciation that we have a large number of housing starts. It is wonderful.

However, it is a great pity that the people who are building these homes are having to pay from \$30,000 to \$40,000 on the purchase of a \$20,000 home, in interest rates. I believe it is terrible we permit that to be done.

We have been unable to reduce the rates. They can be reduced. They could be reduced to 5 percent on housing loans to the purchaser and owner. There are ways of doing it without additional cost to the Government, to save the people tremendous sums of money. I certainly am dissatisfied that we are not able to do more to save the consumer more money on the purchase of homes, something that is so necessary in the promoting of environmental quality.

THE EFFECT OF CHANGING THE PAR VALUE OF GOLD ON INTEREST RATES

(Mr. GROSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GROSS. Mr. Speaker, it seems to me that implicit in the action which was taken yesterday to devalue the dollar, sponsored and fathered by the gentleman from Texas (Mr. PATMAN) is an increase in interest rates and inflation, because, if I read the papers correctly, many hundreds of millions, perhaps billions of dollars will be extracted from the U.S. Treasury to take care of the so-called short fall in U.S. contributions to various international institutions due to the deliberate dollar devaluation.

I wonder who is going to take care of the "short fall" for every citizen of this

country whose dollars will also be depreciated as a result of yesterday's action by some 8 percent.

CONFERENCE REPORT ON S. 18, GRANTS TO RADIO FREE EUROPE AND RADIO LIBERTY

Mr. MORGAN. Mr. Speaker, I call up the conference report on the bill (S. 18) to amend the U.S. Information and Educational Exchange Act of 1948 to provide assistance to Radio Free Europe and Radio Liberty, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of March 14, 1972.)

Mr. MORGAN (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read. It was printed in the RECORD on March 14, I am sure the Members have read the report and the statement.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Chair recognizes the gentleman from Pennsylvania.

Mr. MORGAN. Mr. Speaker, I yield myself 5 minutes.

After long and frustrating deliberation, the managers on the part of the House reached agreement on S. 18, which authorizes the funds necessary to keep Radio Free Europe and Radio Liberty operating until the end of the current fiscal year—June 30, 1972.

The Senate agreed to the House figure of \$36 million for fiscal year 1972, an increase of \$1 million over the Senate authorization.

The House bill included an authorization for fiscal year 1973, but the Senate refused to agree to any authorization for fiscal year 1973. The House accepted the Senate provision which provides funds only through next June 30.

The Senate conferees agreed, however, as set forth in the statement of the managers "that further legislation will be considered before the end of the fiscal year."

The principal issue which confronted the conference committee was the fact that the majority of the Senate conferees wanted Radio Free Europe and Radio Liberty to close down next June 30.

The House conferees insisted that we would not accept the Senate bill if, by accepting their bill, we were put in the position where we might be said to have accepted the Senate contention that the two programs were to terminate on June 30. We did not agree to the termination of these programs, and the statement of managers includes a statement agreed to by both sides that further legislation will be considered before the end of the fiscal year.

We were confronted with the fact that both Radio Free Europe and Radio Liberty had run out of money and would have to close down unless agreement was reached.

The continuing resolution which had financed their operations since last July expired on February 22. They had been able to meet their payrolls for a couple of weeks, but they said it was necessary to notify their employees that they were closing down unless an agreement on the authorization was reached on March 15.

The Committee on Foreign Affairs was impressed by the testimony of the witnesses who appeared before us last fall in support of Radio Free Europe and Radio Liberty. People who had lived behind the Iron Curtain and who had depended on these two programs for uncensored news gave convincing testimony as to the effectiveness of both of these operations.

I remember particularly that when there were riots at certain seaports in Poland over a year ago, the only way that news of these riots reached the people of Poland outside the cities was from the broadcasts of Radio Free Europe.

I believe that the United States should continue to support these programs. I also believe that this view is shared by a majority of the other body.

The latest information I have is that more than 60 Senators have joined in sponsoring Senate Resolution 272, expressing support for Radio Free Europe and Radio Liberty, but the Senate conferees apparently were not influenced by this indication of the attitude of a majority of the Senate.

The bill that passed the House on last November by a vote of 271 to 12 provides a much more realistic and constructive approach than the legislation we have brought back from conference.

I believe that the conference report before us is the best agreement that could be reached under the circumstances, however, and I urge its approval.

Mr. GERALD R. FORD. Mr. Speaker, will the gentleman yield?

Mr. MORGAN. I am glad to yield to the distinguished gentleman from Michigan.

Mr. GERALD R. FORD. Let me compliment the gentleman from Pennsylvania, the distinguished chairman of the committee, and the gentleman from California (Mr. MAILLIARD), the ranking Republican member of the committee, for trying to get a better settlement than has been brought back to the House today. I know that both of them and the other members of the conference on the House side strove mightily to attempt to get a longer life for Radio Free Europe and Radio Liberty and better funding, but complications arose in the conference which, unfortunately, could not be resolved except for the conference report which is before us today.

Could the gentleman from Pennsylvania outline, if possible, what he thinks will happen between now and the end of this authorizing legislation?

Mr. MORGAN. I understand that funds have already been appropriated and are available as soon as the authorization is approved. I can assure the minority leader that as soon as the message

comes up from the Executive asking for an extension for the year 1973, the Committee on Foreign Affairs will hold hearings and take action to bring the matter before the House before the end of the fiscal year I believe that the proposal for a study commission to decide what future arrangements should be made for continuing these programs as provided in the House is a good idea and will receive careful consideration by the Foreign Affairs Committee when the matter comes before us again. I feel it is the best approach, and I hope we can extend the life of the agency through 1973 until this study is completed.

Mr. GERALD R. FORD. I thank the gentleman, and I wish him well because I agree with him that this program has had a fruitful and beneficial life from the point of view of the United States. To kill these two programs now I think would be a most unwise act as far as our country is concerned.

Mr. MORGAN. I think that the many expressions of support for Radio Free Europe and Radio Liberty which came from all parts of the country show that these programs are in the best interest of the United States.

Mr. GROSS. Mr. Speaker, will the gentleman yield to me?

Mr. MORGAN. I am glad to yield to the gentleman from Iowa.

Mr. GROSS. I thank the gentleman for yielding.

Would the gentleman refresh my memory? Is the \$36 million provided in the conference report the total for fiscal 1972?

Mr. MORGAN. That is right.

Mr. GROSS. The total authorization for this purpose for fiscal year 1972?

Mr. MORGAN. That is correct. This is for fiscal year 1972 which ends June 30.

Mr. GROSS. I thank the gentleman.

Mr. MORGAN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. PODELL).

Mr. PODELL. Mr. Speaker, we have before us a bill to amend the United States Information and Education Exchange Act of 1948 to provide assistance to Radio Free Europe and Radio Liberty.

Radio Liberty's history reads of good worthy goals, accomplished by not-so-worthy means. The revelation that Radio Liberty's espousal of the cause of freedom was financed with Central Intelligence Agency funds illustrates this point most cogently.

Thus I welcome S. 18, designed to make Radio Liberty an agent of the public interest, financed by the public and accountable to it. I welcome the proposed study commission and its goal to evaluate the need and appropriateness of such broadcasting in an era of detente.

But there is one sort of broadcasting that is clearly needed now, today, more than ever. That is regularly scheduled Yiddish broadcasts directed to Soviet Jews. Such broadcasts should not replace the regular news and feature items aired in Russian. They should be in addition to such Russian language material.

Such programs serve a dual purpose:

First, they would provide information on cultural, educational, and religious

topics that Russian Jews can find nowhere else. For in Russia, all books on Jewish history and culture are locked in libraries for the use of scholars with official authorization. And I need not tell you that the Russian Government rarely favors interested Jews with such permission. In fact, several courageous men and women have served sentences in the notorious Russian labor camps for exactly this crime—unauthorized possession of Jewish educational material. Radio Liberty Yiddish programing could fill this gap now in a time when the consciousness of Russian Jews and their interest in their cultural heritage grows daily.

Second, Yiddish broadcasts to Russian Jews by a radio station financed by the U.S. Government would communicate to the Soviet Jews struggling to retain their cultural identity in an atmosphere of persecution and repression that the people of the United States support them in their valiant fight.

Some people have minimized the potential impact of such broadcasts with deceptive figures on the number of Jews who speak Yiddish. It is true that most Soviet Jews do speak Russian; but it is also true, and much more significant, that most Soviet Jews understand Yiddish. Many, in fact, prefer to use it as a means of retaining their Jewish identity.

Some Americans, free to educate themselves and their children as they see fit, look at the decreasing usage of Yiddish in this country and wrongly conclude that Yiddish is a language of the "shtet Europe shetl" that exists no more. I disagree with this conclusion.

Soviet Jews have no freedom to send their children to cultural schools. But they do have Yiddish with its cultural richness and texture, that expresses 2,000 years of Jewish history like nothing else can, to teach their children. They would be glad, as emphasized by many prominent young Russian Jews who have escaped to the West, for Radio Liberty's help in that task.

It is a task that Radio Liberty can safely undertake without fear of upsetting our efforts to achieve a detente with the Russians. I base this conclusion on a news interview that quoted Ambassador Anatole Dobrynin, of the Soviet Union, as saying that such broadcasting would have no effect on Russian-American relations.

I have written to the Secretary of State and to Radio Liberty on this matter.

I hope that Radio Liberty will use its new freedom wisely and in the public interest, and broadcast regularly scheduled programs in Yiddish.

Mr. MAILLIARD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of the conference report on S. 18, the bill to authorize funds for the operation of Radio Free Europe and Radio Liberty.

It was an extremely difficult and frustrating conference. I am keenly disappointed that we were not able to sustain the position of the House, which had passed a reasonable and constructive bill on November 19, 1971.

I am sure most Members are aware of this intransigence of several of the Senate conferees. In their effort to kill

the radios, they rebuffed our every effort to negotiate a reasonable compromise.

While the conference agreement leaves much to be desired, it does at least continue the radios through the remainder of this fiscal year. It specifies that the conferees agreed to legislation which will continue the programs at the authorized rate of \$36 million only for the balance of the current fiscal year "with the clear understanding, however, that further legislation will be considered before the end of this fiscal year."

I hope the House will demonstrate its strong support for the continuation of Radio Free Europe and Radio Liberty by voting overwhelming approval of this conference report.

Mr. BROOMFIELD. Mr. Speaker, the adoption of the conference report on S. 18 today represents the culmination of many months' laborious effort to save Radio Free Europe and Radio Liberty as voices of freedom behind the Iron Curtain. While it is necessary to accept this report, the legislative solution it contains is inadequate because it provides for the continuance of these two valuable radio organizations only until the end of this fiscal year. This is an insufficient reflection of the confidence this body has shown in the two radios. With the adoption of this conference report, we are now faced with the prospect in the near future of going through the hearings again and repeating the whole legislative process in order to obtain legislation for next year. The House bill would have provided a 2-year authorization and a commission to carefully study the desirability of continuing the radios and making their recommendations to the Congress before the end of that period.

In conference, the Senate conferees seemed to be unaware of the fact that the name of the game when the conferees of the two bodies meet is compromise. The Senate conferees refused to budge one iota from their 1-year authorization and from the requirement that the funding be through the State Department rather than through an independent source.

You will recall, Mr. Speaker, that the House version of S. 18 passed this body with 27 votes in favor and only 12 votes against. The Percy-Humphrey sense of the Senate resolution, Senate Resolution 272, advocating the continuance of Radio Free Europe and Radio Liberty has now been cosponsored by 67 Members of that body. This is a clear indication of what the Members of Congress think of the work that is being done by the radios.

As a dramatic indication of how important the voice of Radio Liberty is to those compelled to live behind the Iron Curtain, in the Soviet Union, a letter was sent this week to Congress signed by 97 residents of Israel who were able to leave the Soviet Union. Their plea to the Congress is to preserve Radio Liberty. In their letter they say:

It is very difficult to explain to you, people of a free country, how vital and important it is for everybody behind the Iron Curtain to get a true and objective information about world affairs.

We suppose that you have already received

many letters and requests from righteous persons all over the world, asking you not to close down this station. We believe that they are, as we are, wondering how could you even take into consideration the shutting down of this source of encouragement and hope for so many people!

The record of the hearings in committee is replete with similar statements by former residents of Eastern Europe. We have done the right thing in preserving the radios but it is unfortunate that we must start our labors anew in order to keep the radios from falling victim to those who seek their demise.

The fact that there will be legislation concerning the radios is a tribute to the persistence, patience, and leadership of the distinguished chairman of the Foreign Affairs Committee, the gentleman from Pennsylvania.

Mr. DERWINSKI. Mr. Speaker, I support the conference report with reluctance. I believe Radio Free Europe and Radio Liberty should have long-term authorization and appropriations support, not the very limited time set by this report.

It is my understanding that necessary steps will be taken in the House and Senate to overcome the obstructionist tactics of the junior Senator from Arkansas and legislation extending the operations of these two radio stations will develop in time.

I would remind my colleagues of the House that much as we wish it, the battle for the minds of men is not yet over. So long as censorship prevails in the Soviet bloc, their citizens will seek to know the truth.

If we tire of the competition and write off the minds of millions in the Soviet bloc, we reduce their ability to influence their governments toward the liberalization of policies. To achieve a generation of peace, we must continue to compete for the minds of men.

Mr. SCHEUER. Mr. Speaker, my recent trip to the Soviet Union increased my understanding and appreciation of the vitally needed service to Soviet citizens—Jews and non-Jews alike—provided by Western radio broadcasts. In my conversations with Jews and dissidents in Moscow and other cities, I was told over and over again that the programs of the Voice of America and Radio Liberty, BBC, and Kol Israel make available not only hard information suppressed by official media, but also build for them a deeply needed emotional bridge to the West.

The broadcasts reassure them that they are not alone, that people in the outside world have not forgotten them and continue to take a sympathetic interest in their struggle for basic human rights.

I share the desire to end the cold war and its relics. But, as the Washington Post has noted, Radio Liberty's broadcasts are not "provocative, propagandistic diatribes." Instead, Radio Liberty provides the people of the Soviet Union with news that they are unable to obtain in any other way, and it does so, again in the words of the Post, "professionally, responsibly and effectively." The broadcast of news in this manner cannot be viewed as a continuation of the cold

war, and the free flow of information cannot be viewed as an obstacle to the continued search for detente.

It may very well be that the broadcasts of Radio Liberty ought to be further toned down, but the need for reform should not impel us to "throw the baby out with the bathwater." We should make every effort to support Radio Liberty, and the desire for better relations between the United States and the Soviet Union should not prevent the acceptance of this bill which will permit Radio Liberty to continue its broadcast operations.

Mr. RODINO. Mr. Speaker, I am very pleased to give my strong support to the conference report on S. 18, to permit continued funding for Radio Free Europe and Radio Liberty through fiscal year 1972. However, I am at the same time deeply distressed by the recent impasse that for a time threatened to silence the broadcasting of factual news and opinion by these two stations to the peoples of the Soviet Union and the Communist East bloc nations.

It is imperative, in my judgment, that we immediately move to consider legislation to resolve the future role of Radio Free Europe and Radio Liberty following this brief reprieve for the stations' operations.

I have a special interest in these two voices of freedom, Mr. Speaker, for I am the author of Public Law 90-215, enacted in 1967, which amended the Immigration and Nationality Act to permit the naturalization of the dedicated employees of Radio Free Europe and Radio Liberty. Previously these individuals, who for long years selflessly served the interest of the United States abroad, had been unable to obtain citizenship. Despite their permanent resident alien status, they could not fulfill the residency requirements of our Immigration and Nationality Act because they remained in Europe to transmit messages of truth and hope to the peoples of Russia, Bulgaria, Czechoslovakia, Hungary, Poland, and Romania.

I urge approval of the conference report, and I would like to include in the RECORD an article from Time magazine of March 6, and an editorial from the Newark Star-Ledger of March 16 commenting on the importance of continuing the broadcasts of Radio Free Europe and Radio Liberty.

It is my hope that Congress will act expeditiously to consider the role of Radio Free Europe and Radio Liberty, and the proper means of financing their broadcasts, for, as the Time article noted:

They have both won a reputation for veracity and reliability inside and outside the Communist countries.

The articles follow:

[From Time, Mar. 6, 1972]

TURNING OFF THE RADIOS

For more than two decades, the Soviet Union and its Eastern European allies have tried to silence Radio Free Europe, which beams programs of news, music and political commentary to five Eastern European countries, and Radio Liberty, which broadcasts exclusively to the Soviet Union. Last week both stations were on the brink of being shut down—by U.S. Senator J. William Fulbright.

The chairman of the Senate Foreign Relations Committee is waging a singlehanded

and (so far) highly effective battle against the two stations whose broadcasts from West Germany, he feels, jeopardize America's efforts to improve relations with Communist nations. "These radios," says Fulbright, "should take their rightful place in the graveyard of cold war relics."

STOP PAYMENTS

One basis of Fulbright's two-year-old campaign is that the stations, instead of being the private organizations that they claimed to be, were actually supported by the Central Intelligence Agency. Last spring the Nixon Administration ordered the CIA to stop its payments and proposed the creation of a public-private corporation similar to COMSAT that would run the two stations under congressional scrutiny. But Fulbright has created a deadlock between the House and Senate over bills that would keep the stations alive until this or some other new arrangement could be worked out. As a result, a temporary congressional appropriation expired last week, leaving RFE and Radio Liberty with only enough money for a few more weeks of operation.

As it happens, Fulbright's criticism of the stations is itself a cold war relic. To be sure, when they were founded in the early 1950s, both Radio Free Europe and Radio Liberty were indeed propaganda tools that sought to undermine the Communist governments. To its enduring discredit, Radio Free Europe, in the opening stage of the 1956 revolution, encouraged Hungarian freedom fighters to believe that the West would intervene militarily on their side. Since then, however, there have been massive personnel and policy changes at both stations.

MUSIC HOURS

Most of the old émigré right-wingers, who unrealistically ranted for an overthrow of the Communist regimes, were weeded out in favor of younger and more perceptive East Europeans and Soviet defectors. In general, these staffers have tried to encourage a process of liberalization within the Communist societies. No one can evaluate to what degree the stations have affected developments in the East bloc, but they both have won a reputation for veracity and reliability inside and outside the Communist countries.

Radio Free Europe employs 1,600 people, 960 of them at its headquarters in Munich. Operating on a \$21 million budget, it broadcasts a total of 557 hours each week in native language to Poland, Czechoslovakia, Rumania, Bulgaria and Hungary. About half of the programs is news and analysis of events in the various East bloc countries. Other programs range from music hours featuring the latest Western rock to special reports on living conditions of foreign workers in Western Europe.

Much of RFE's information comes from monitoring of East European news services and radio broadcasts, and interviews with travelers. The station's 100 political analysts, many of them natives of Eastern Europe, often are able to draw deductions that an official Eastern European commentator could never make. Example: the notion that the Polish government actually encourages alcoholism because it collects a big tax on vodka.

To protect its reputation for accuracy, RFE's broadcasts, if anything, err on the side of caution. When reports of Alexander Dubcek's ouster first came from Prague over a Western news ticker, RFE waited for Czechoslovakia's confirmation before airing the item. Despite the fact that for years RFE held up Yugoslavia as an example of how a Communist regime could peacefully develop toward liberalism, RFE has given extensive coverage to the Croatian crisis that has shaken Yugoslavia's progress toward greater governmental freedoms. Judging by the annual polls of East bloc tourists in Western Europe, RFE's audience is impressive: 78% of all radio-listening Poles, 81% of the Hun-

garians, 77% of Rumanians, 78% of Bulgarians and 60% of the Czechoslovaks. At present, all the East bloc countries except Czechoslovakia and Bulgaria have given up trying to jam RFE since the broadcasts tend to get through anyhow.

Samizdat Essay. Radio Liberty, which has a \$14 million budget, employs 800 persons, including 250 Soviet defectors. It broadcasts 24 hours daily in 19 languages. A research staff of 40 gleans Russian publications for details about happenings in the country. Through private channels, Radio Liberty receives underground samizdat (literally, self-publishing) manuscripts that are clandestinely circulating in the Soviet Union and broadcasts them to listeners in Russia.

At Radio Liberty, a typical day's broadcasting, in addition to hourly news bulletins, might include a samizdat essay by a Soviet engineer on the need for economic reform in Russia and a synopsis of a Polish film that is not being shown in Russia. Radio Liberty tries to fill in gaps caused by Soviet censorship. For example, it carries criticism by Western psychiatrists about Soviet imprisonment in mental hospitals of political dissenters.

The Soviet and Eastern European regimes understandably want RFE and Radio Liberty closed down since they challenge the governments' control over the information reaching their people. Despite Fulbright's argument that the stations must be silenced as a U.S. contribution toward relaxing tensions in Europe, many Western Europeans maintain exactly the opposite. As one West German editorial put it: "In this era of detente, it is all the more important that the voice of free opinion is not silenced." Even though his Ostpolitik seeks better relations with the Communist countries, West German Chancellor Willy Brandt obviously agrees. He has consistently rejected Polish and Soviet suggestions that the stations' licenses to operate from West German territory be withdrawn.

[From the Star-Ledger, Mar. 16, 1972]

VOICES OF FREEDOM

The Nixon Administration has won a partial victory in averting the unfortunate shutdown of Radio Free Europe and Radio Liberty, which have played vital roles in keeping open lines of communication for people in Eastern Europe and the Soviet Union.

The transmissions of these stations have provided factual news of the outside world to people whose governments would prefer to force-feed with distorted domestic propaganda.

Despite a highly favorable report by the Library of Congress, which made a study at the request of the Senate Foreign Relations Committee, the stations were threatened with extinction because of differences between House and Senate conferees on bills authorizing the continuation of these broadcasts.

Under an arrangement worked between the White House and congressional aides, the Administration agreed to drop its efforts to obtain long-term funds for American-operated stations and accepted a plan to keep them on the air at least three more months.

The two stations were set up at the height of the cold war to broadcast news and commentary to people behind the Iron Curtain. They have been attacked and reviled by Moscow and other Communist countries because their transmissions often included news not available in the tightly-controlled Communist media.

The existence of electronic allies of liberal elements in the Communist world could be a bargaining point for the President when he visits Moscow next May. Any final decision on the fate of Radio Free Europe and Radio

Liberty should be deferred until after Mr. Nixon returns from the Soviet Union when Congress can take a fresh look at U.S.-Russian relations.

Mr. MORGAN. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MORGAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days during which to extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 13592, NATIONAL SICKLE CELL ANEMIA PREVENTION ACT

Mr. O'NEILL. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 904 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 904

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13592) to amend the Public Health Service Act to provide for the prevention of sickle cell anemia. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. O'NEILL. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. BURTON. Mr. Speaker, will the gentleman yield?

Mr. O'NEILL. I yield to the gentleman from California.

(By unanimous consent, Mr. BURTON was allowed to speak out of order.)

(Mr. BURTON asked and was given permission to revise and extend his remarks and to include extraneous matter.)

DEMOCRATIC STUDY GROUP WELCOMES REPRESENTATIVE OGDEN REID TO THE RANKS OF THE NATIONAL DEMOCRATIC PARTY

Mr. BURTON. Mr. Speaker, as chairman of the Democratic Study Group, I am pleased to welcome Representative OGDEN REID to the ranks of the National Democratic Party in the House of Representatives. As noted in an editorial in this morning's New York Times, he has long

been a leader of the progressive wing of the Republican Party. His joining our party brings to us "another future leader of great decency, dedication, and talent."

Since the latter part of the 19th century, Representative REID's family has devoted itself to public service in the finest tradition of the Republican Party. In light of this tradition, it is easy to understand Representative REID's disillusionment with the current direction of the Republican Party.

We encourage men of conscience on the other side of the aisle to emulate Representative REID's fine example. Thus strengthened, we will go on to make the House of Representatives the progressive, responsive institution conceived by the founders of the Republic.

The editorial follows:

DEMOCRAT REID

Leaving the Republican party is a much tougher wrench for Representative Ogden R. Reid than it was for Mayor Lindsay. His grandfather was a founder of the G.O.P. and its Vice Presidential candidate in 1892 on a slate headed by Benjamin Harrison. The Westchester Congressman was the last member of his family to edit The New York Herald Tribune in its long career as a voice of intelligent Republicanism.

That Mr. Reid has decided he can no longer stay in the party is graphic evidence of how far to the right it has drifted under the leadership of President Nixon. Unquestionably, the stiff primary challenge Mr. Reid faced from powerfully backed conservative elements in the state G.O.P. helped prompt his switch into a Democratic party that is hardly at the peak of its popular appeal or internal unity. But an even stronger spur was the increasing distaste Mr. Reid felt for pretending ties with an Administration whose policies he could not swallow on such issues as civil liberties, education, child care, the fight against racial discrimination and the pace of extrication from Vietnam. Above all, his break came out of despair at the divisive trend of most Administration approaches.

As believers in a strong and vital two-party system, we are sad to see the Republican party in this state—so long a leader in the party's progressive wing—becoming a conservative bastion with diminished appeal to independents of the type responsible for the repeated elections of Governor Rockefeller and Senator Javits. But the Governor himself has been a poor recent steward of that tradition and Mr. Reid risked total isolation. His decade of service in the House has been marked by steady growth in the quality and diversity of his accomplishment. Still short of his 47th birthday, he brings to the Democrats another future leader of great decency, dedication and talent.

REPRESENTATIVE REID QUITTING GOP; PLANS RACE AS A DEMOCRAT (By Richard L. Madden)

WASHINGTON, March 21.—Representative Ogden R. Reid of Westchester County, whose family's involvement with the Republican party dates back almost a century, will announce tomorrow his switch to the Democratic party.

Friends of the 46-year-old liberal Republican said that among the factors involved were a decision that he could not support President Nixon for re-election, the prospect of a difficult Republican primary fight in his newly drawn Westchester district, and a feeling that his chances for advancement to statewide office, such as Governor, were blocked on the Republican side.

Mr. Reid, who is completing his 10th year

in the House and who has been increasingly critical of the Nixon Administration, scheduled a news conference for 10:30 A.M. tomorrow at the Carlyle Hotel in New York City to make what his office called "an important political announcement."

Mr. Reid was reported by his office to be in New York and unavailable for comment. However, other political figures—Republican as well as Democratic—who have talked to him in recent days said they were convinced that he would announce his candidacy for reelection as a Democrat.

Such a shift would follow by seven months the move by Mayor Lindsay, a political ally of Mr. Reid, into the Democratic party and would further weaken the ranks of the so-called progressive wing of the Republican party in New York State.

In anticipation of Mr. Reid's announcement, the Westchester County Republican organization, which had been scheduled to hold a convention in White Plains tomorrow night to designate Congressional candidates, postponed its meeting. Republican officials began discussing potential candidates who might make a strong race against the Representative.

PERSUASION SAID TO FAIL

It was understood that John N. Mitchell, the former Attorney General who is now directing Mr. Nixon's re-election campaign, met with Mr. Reid last weekend in an apparently unsuccessful effort to talk the Representative out of bolting the Republican party.

At a news conference in Albany today, Governor Rockefeller acknowledged that he had discussed the matter with Mr. Reid "over the last two or three weeks." The Governor indicated that he expected a party switch.

Mr. Rockefeller said that any statement should come from Mr. Reid, whom he praised as a "long and old friend" who had been a strong supporter of previous Rockefeller campaigns for the Presidency and Governor. The Governor added:

"Now I know, and have known for quite a while, that he [Mr. Reid] has been frustrated with getting—the problem of getting things done—in Congress, and that his rate of progress onto the statewide scene in the state has not been as rapid as I think he would like to see it. So I understand the considerations he faces."

"THE WRONG PARTY"

Mr. Rockefeller continued: "Now, my personal feeling would be that for anyone to switch his allegiance from the Republican party to the Democratic party would be joining the wrong party at the wrong time, but that is a personal feeling."

Two years ago Mr. Reid scored only a narrow victory in the Republican primary, but he won handily in the general election, with his traditional drawing of Democratic and independent votes.

Max Berking, the Westchester County Democratic chairman, declined comment on Mr. Reid's intentions, but he said that he thought the Representative would be welcomed by Democratic officials, who are scheduled to meet Thursday night to designate candidates.

While Mr. Reid has been increasingly critical of the Nixon Administration, a decision to leave the party was regarded as somewhat uncharacteristic for the Representative, whose ties to the Republicans have been strong.

His grandfather, Whitelaw Reid, was the unsuccessful Republican nominee for Vice President on Benjamin Harrison's ticket in 1892. Mr. Reid, a former president and editor of the now defunct New York Herald Tribune, was the United States Ambassador to Israel in the Eisenhower Administration.

If Mr. Reid is re-elected as a Democrat, his 10 years of seniority in the House also might be endangered.

Mr. O'NEILL. Mr. Speaker, House Resolution 904 provides an open rule with 1 hour of general debate for consideration of H.R. 13592, the National Sickle Cell Anemia Prevention Act.

The purpose of H.R. 13592 is to amend the Public Health Service Act to provide for the prevention of sickle cell anemia.

A national program will be established for diagnosis, prevention, and treatment of the disease together with screening and counseling programs and informational programs.

Grants and contracts by the Secretary are authorized for the establishment and operation of voluntary screening and counseling programs as part of other existing public health care programs. In order to carry out this section of the legislation, \$20 million are authorized for fiscal year 1973, \$25 million for fiscal year 1974, and \$30 million for fiscal year 1975.

The Secretary is authorized to make grants and contracts for research and development programs. In order to carry out this section of the bill, \$5 million are authorized for fiscal year 1973, \$10 million for fiscal year 1974, and \$15 million for fiscal year 1975.

The bill sets forth the requirements applicable to grants under the act.

Mr. Speaker, sickle cell anemia is one of the greatest killers among young black children in the Nation today. Annually, an estimated 1,155 new cases are discovered; and for each of these new cases a very painful and usually fatal disease has begun. This figure for the estimated number of new cases discovered is considerably higher than the estimate for other major hereditary childhood diseases. For instance, cystic fibrosis has only 1,206 new cases discovered annually; muscular dystrophy, 813.

At least 50,000 black Americans suffer from sickle cell anemia. Each year, one in 500 black births is afflicted with this crippling disease, and at least 5,000 require hospitalization. Although there is a wide range in the severity of the disease process, black Americans afflicted with this disease rarely survive to adulthood. Most die before they reach the age of 20.

It is important to distinguish between those who have the sickle trait and those that suffer with the disease. Those who have only one positive sickle cell gene may not suffer from the disease, but can transmit the disease to their children. Experts have estimated that of the 25 million black people in America, approximately 2.5 million may have the sickle cell trait. This means that if two carriers produce a child, there is a 25-percent chance that the child will have sickle cell anemia and a 50 percent chance that the child will be a carrier.

Sickle cell anemia results from an abnormal hemoglobin molecule in the red blood cells which cause the cells in the body to take on a sickle S-shape. Once the cells have this form, several clinical manifestations may occur: Severe anemia can result; the normal flow of blood to the vital organs such as the heart, kidney, lungs, is impeded by the sickle-shaped cell. When the normal flow of blood is impeded, intense pain results; most victims die from the disease, since

the repeated oxygen crisis from lack of blood flow to vital organs causes a toll on the body.

Sickle cell anemia is a genetically hereditary form of anemia which afflicts blacks almost exclusively. At the present time, there is no known cure for this disease.

I need not emphasize the significance and importance of the legislation before us today. The national program established by H.R. 13592, National Sickle Cell Anemia Prevention Act, would not only conduct research to improve the treatment of persons suffering from sickle cell trait or sickle cell anemia. More importantly, the bill authorizes grants and contracts to assist in establishing and operating voluntary sickle cell anemia screening and counseling programs. The screening process would be to determine who has the disease and who are the carriers of the disease; this is the one major area of the disease which needs to be further developed.

It is estimated that between 8 and 13 percent of the black population carries sickle cell trait. This bill will enable tests to be run in schools in black areas to help both parents and children understand the disease and understand how best to keep healthy those who are afflicted with the disease or those who carry the trait.

This bill is a stepped-up effort to make a real national commitment to attack this crippling and, in most cases, fatal hereditary disease. Research treatment and information about sickle cell anemia have been conducted by NIH and the Veterans' Administration. President Nixon, in his health message to Congress in 1971, called for an increase of \$6 million in the budget for research into sickle cell anemia. These efforts are only initial commitments to find ways to treat and cure this disease. H.R. 13592 authorizes \$25 million for the first fiscal year this act goes into effect. But this, too, is only a beginning to help victims of sickle cell anemia.

While I wish to express my strong support for this measure, I feel that the bill as reported by the committee is only a halfway measure since there are two commonly found genetic blood disorders leading to anemia in America, the other one being Cooley's anemia. Initially, this anemia was prevalent of persons of Mediterranean descent, namely Greeks and Italians. Today, however, America's Mediterranean population has intermarried. The disease is now found not only in Americans of Italian and Greek origin, but also in Americans of Jewish, Scandinavian, and even Oriental origin. Like sickle cell anemia, the victim of this disease rarely lives to adulthood. Like sickle cell anemia, Cooley's anemia is a hereditary disease in which 25 percent of children born of individuals with even a mere trait of the disease will have a severe form of the disease and 50 percent will be carriers. While the severity of the disease covers a wide range in sickle cell victims, victims of Cooley's anemia always suffer from severe forms. From early life on, the victims of Cooley's anemia must undergo daily blood transfusions in order to maintain a blood count sufficient for survival.

Like sickle cell anemia, not much Federal research and grant programs have been given to find treatment for victims of Cooley's anemia. I believe that both forms of anemia are serious problems and that Federal assistance is essential to make progress against these two fatal diseases. Why should this act merely provide funds and assistance to attack sickle cell anemia and do nothing for the equally fatal Cooley's anemia? For these reasons, I strongly support Bob GIALMO's amendment for \$7.1 million in Federal assistance to combat Cooley's anemia.

Mr. Speaker, I urge the adoption of the rule in order that the legislation may be considered.

Mr. LATTA. Mr. Speaker, I agree with the statement just made by the gentleman from Massachusetts, Mr. O'NEILL, the purpose of the bill is to establish a national program for diagnosis, prevention and treatment of sickle cell anemia together with screening and counseling programs and informational programs.

Sickle cell anemia is said to occur in approximately one in 500 black births in the United States per year. Although there is a wide range in the severity of the disease process, those who have the disease rarely survive to adulthood.

The cost of this bill is \$25,000,000 for fiscal year 1973, \$35,000,000 for fiscal year 1974; and \$45,000,000 for fiscal year 1975.

Since H.R. 13592 is a clean bill, introduced after the conclusion of hearings, the report of the Committee on Interstate and Foreign Commerce does not include reports from the executive agencies on this particular bill. However, other bills dealing with the same subject, were opposed by HEW on the grounds that programs already existing within HEW were sufficient to achieve the purposes of these bills. The other executive agencies expressing views either concur with HEW or oppose particular sections of the bills.

There are no minority views included in the report of the Committee on Interstate and Foreign Commerce.

The bill was ordered reported unanimously by a voice vote. Similar legislation passed the Senate on December 8, 1971—S. 2676.

Mr. Speaker, I yield 5 minutes to the gentleman from Tennessee (Mr. QUILLEN).

(By unanimous consent, Mr. QUILLEN was allowed to speak out of order.)

MISUSE OF FLAG BY NBC

Mr. QUILLEN. Mr. Speaker, the National Broadcasting Co., in its primary election coverage this year, has, in my opinion, violated the Federal Flag Code by using the U.S. flag in its advertising and as an introduction to its election campaign coverage.

For the past several weeks, I have watched with distaste and repulsion as NBC flashes its "Decision '72" before millions of television viewers. I object to the use of the U.S. flag as a part of the numeral seven and I contend that this image is in very poor taste.

To those of us who have a deep feeling for our flag and its symbolism, this action on the part of NBC is degrading and disrespectful.

Mr. Speaker, I do not take the floor to question the patriotism of the officials or anyone at NBC, but to spotlight this violation of the Federal Flag Code in the hope that it will immediately be corrected.

Volume 36 United States Code, section 176(i), states:

The Flag should never be used for advertising purposes in any manner whatsoever.

The use of the flag in advertising for campaign coverage by NBC is clearly an infraction of the Federal Flag Code.

Unfortunately, the Code does not prescribe any penalties for noncompliance with its rules, nor does it include any other provision for enforcing compliance. The Code, as distinguished from the antidesecration law, is intended to be a guide to be followed on a voluntary basis by all U.S. civilians or civilian groups to the end that, as far as practicable, the manner in which the flag is displayed shall be uniform.

Surely, if a television network of the stature of the National Broadcasting Co. cannot abide by these guidelines, how can we expect our citizenry to show proper respect for the flag. More importantly, how can we impress upon our young people that this emblem is the traditional symbol of our free land.

While NBC's use of the flag in the numeral 7 of its "Decision '72" format might not constitute an intentional or knowing contempt of the flag, I contend that it is wrong to include it in this way. Indeed, it is an insult to this emblem of justice and freedom—the embodiment of our Nation's principles.

I am confident the network artists can come up with a better promotional gimmick for its election coverage and special reports this year than having the flag imposed in the numeral 7 in their "Decision '72" advertising.

The National Broadcasting Co. and all television networks and news media have a tremendous responsibility to the American public. They are a great influence on the thinking of our citizens and they are charged with setting a good example.

Their purpose is not to offend and I feel in most instances they strive to conduct their programing and news broadcasts in the best possible taste.

However, by using the U.S. flag as a promotional gimmick to advertise their "Decision '72" coverage, the National Broadcasting Co. is violating the Federal Flag Code in the worst possible respect.

Needless to say, Mr. Speaker, I hope that last night's coverage of the Illinois primary is the last time I personally have to watch this distasteful misuse of the American flag.

Mr. LATTI. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. O'NEILL. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CALL OF THE HOUSE

Mr. O'KONSKI. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. BOGGS. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll and the following Members failed to answer to their names:

[Roll No. 85]

Aspin	Galifianakis	O'Hara
Baring	Gallagher	Passman
Belcher	Gaydos	Patman
Biaggi	Gray	Pike
Bingham	Hagan	Pirnie
Bolling	Halpern	Pryor, Ark.
Cabell	Harvey	Purcell
Celler	Hawkins	Rangel
Chappell	Hébert	Rees
Chisholm	Heckler, Mass.	Reld
Clark	Heinz	Rostenkowski
Clay	Howard	Ruppe
Collins, Ill.	Hull	Saylor
Conyers	Johnson, Pa.	Scheuer
Corman	King	Shoup
Crane	McEwen	Sisk
de la Garza	Mahon	Smith, Calif.
Dellums	Mallory	Stanton
Dowdy	Metcalfe	James V.
Dwyer	Mikva	Stokes
Edwards, La.	Mitchell	Stubblefield
Eshleman	Moorehead	Teague, Tex.
Fuqua	Obey	Yates

The SPEAKER. On this rollcall, 363 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

NATIONAL SICKLE CELL ANEMIA PREVENTION ACT

Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13592) to amend the Public Health Service Act to provide for the prevention of sickle cell anemia.

The SPEAKER. The question is on the motion offered by the gentleman from West Virginia (Mr. STAGGERS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 13592, with Mr. EVINS of Tennessee in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia (Mr. STAGGERS) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. SPRINGER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 13592, the proposed National Sickle Cell Anemia Prevention Act.

This is a 3-year bill with total appropriation authorizations of \$105 million to provide for voluntary sickle cell anemia screening and counseling programs; for informational and educational programs; for research programs; and for treatment programs.

Sickle cell anemia is an inherited blood disease primarily affecting black Ameri-

cans. Approximately 1,000 black infants are born each year with sickle cell anemia, and it is estimated that between 25,000 and 50,000 individuals are currently afflicted with it. These unfortunate individuals usually die before the age of 20; few survive beyond age 40; and most are disabled before death. There is no known cure for the disease.

In general, the program contemplated under the bill will involve screening individuals for the sickle cell trait, and counseling individuals with this trait that in the event they marry a person who also has the trait, the likelihood is one in four that a child born to them will have sickle cell anemia; two in four that a child will carry the sickle cell trait; and one in four that a child born to them will neither have sickle cell anemia nor the genetic abnormality known as the sickle cell trait.

The bill also provides for further research into the diagnosis, treatment, and prevention of the disease.

The bill was considered by the Subcommittee on Public Health and Environment, and unanimously reported to the full committee. The bill was unanimously reported to the House by a voice vote; I know of no opposition to the bill, and urge its passage.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I am happy to yield to the gentleman from Florida.

Mr. PEPPER. Mr. Chairman, I want to commend the distinguished chairman of the committee, the gentleman from West Virginia (Mr. STAGGERS) and the members of his Committee on Interstate and Foreign Commerce for bringing forth this much needed legislation to provide \$105 million for a 3-year Federal program to combat sickle cell anemia.

I was pleased to move in the Rules Committee that this measure—H.R. 13592—be reported out favorably, and, I am happy to say, the bill was reported out unanimously.

Sickle cell anemia is an affliction which primarily affects blacks and yet, many of its potential victims do not understand its painful, and frequently fatal, implications.

The Congress, devoted for more than three decades to major efforts to deal with the various diseases, has previously taken no notice of this ailment which hits one out of every 500 black children and causes the death of many of them before the age of 20.

Cystic fibrosis, which afflicts only one in every 1,400 children, is known to every potential donor of charitable funds; but cystic fibrosis hits home in the white suburbs as well as in the black community.

Sickle cell anemia is associated primarily, however—but not exclusively—with blacks. Those who carried the new gene had an advantage over those who did not. The disadvantages of the mutation are manifest when a child inherits the sickle cell gene from both parents.

The estimates vary as to the number of blacks afflicted with this disease; but it is generally agreed that 40,000 to 50,000 persons have the disease, and an additional 8 to 13 percent of all blacks carry the trait.

One thing about sickle cell anemia is not in dispute. Those who have the disease rarely grow to maturity; thus, it is a disease of children and young adults. Its victims do not survive, but the carriers of a new generation of victims do survive and reproduce.

Current treatment for those suffering from the disease is minimal, at best. This treatment can minimize, however, the sickle cell "crisis" and prolong the life of its victims.

One of the objectives of this legislation would be to provide medical research to find ways to cope with these crises, as well as to develop programs to identify the carriers of the trait, so that they can minimize the possibility of future pairing of the single cell trait.

Federal support for research on sickle cell anemia has previously been provided by the National Institutes of Health, but the budget for fiscal year 1971 was a mere \$1 million. This was split between the National Heart and Lung Institute and the National Institute of Arthritic and Metabolic Diseases.

In the 1972 budget, an additional \$5 million dollars of the Heart Institute's budget was earmarked for programs dealing with sickle cell anemia. But, this is an insignificant fraction of the almost \$2 billion in Federal funds allotted for medical research.

This legislation would show the dramatic increase in congressional support for sickle cell anemia research, which is so long overdue. Without a doubt, sickle cell anemia research is an idea whose time has come.

I strongly urge, not only for the black people of our country, but for black people everywhere, that the House approve this very vital legislation.

Mr. STAGGERS. Mr. Chairman, I thank the distinguished gentleman from Florida.

Mr. BENNETT. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Florida.

Mr. BENNETT. Mr. Chairman, I congratulate the committee for bringing out this much needed legislation. Sickle cell anemia has long been a cruel burden for many of our citizens, an inheritable, debilitating, painful and often fatal disease. With the heavy thrust of the Federal Government to stamp out this disease, there is very real hope for the eradication of the disease in the near future. I am happy to urge the prompt enactment of this legislation to do precisely that.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman.

Mr. MADDEN. Mr. Chairman, I want to commend the distinguished chairman of the Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS) for bringing this legislation to the floor of the House.

The pending bill (H.R. 13592) which was unanimously reported out of the Rules Committee yesterday, is identical with the legislation I filed several months

ago along with a number of other Members of the House.

Chairman STAGGERS and members of the House Interstate and Foreign Commerce Committee are to be commended for the ample hearings held on this legislation and also for reporting the same out of committee for House action.

Sickle cell anemia is a deadly disease and has affected thousands of individuals and families throughout the Nation over the years. I do hope that this legislation is acted upon favorably by the House today as it will provide an initiating program and involve the expenditure of approximately \$105 million over the next few years to effect and promote scientific research for the purpose of curbing and eliminating this mysterious scourge inflicted upon so many of our people.

It is unfortunate that there is at present no effective medical attack or concentrated effort to learn the nature, origin, and risk of this disease. The Congress must persist and strengthen all efforts of research to combat this disease.

More than 10 years after sickle cell anemia was identified as the tragic killer, we are finally beginning to become aware of its terrible tolls. It is a blood disease resulting from the inheritance of a genetic factor relating to the so-called sickle cell trait. It is a painful and deadly disease. It kills over half its victims before the age of 20. Few survive beyond the age 40 and most are crippled long before death.

The disease strikes approximately one out of every 500 black persons. Medical research estimates that over 2 million Americans carry the so-called sickle cell trait. These persons are generally not in danger of the disease itself, but the children of parents who both carry the trait, run high risk of inheriting the disease.

Yet, when compared to other serious diseases, sickle cell has received only minimal attention and research compared with the frequent occurrence of other diseases—neglect of sickle cell anemia research is inexcusable. Cystic fibrosis, a disease that affects primarily white persons occurs with a frequency of one in every 2,940 births. Sickle cell occurs in roughly one out of every 500 births of black children.

There is still no nationwide voluntary organization devoted to sickle cell anemia, but groups in many cities throughout the country are now active and increasing in effectiveness. There is still no cure for sickle cell anemia and it would be cruel for us today to promise one. Thus this bill will provide new impetus and support for continuing and expanding research efforts. In addition to research however, there is a tremendous need to provide education of the public on the nature and inheritance of sickle cell disease.

I do hope that the House today will unanimously vote for the pending bill without adopting any crippling or curtailing amendments.

Mr. SPRINGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the origin of the sickle or half-moon shaped cells in the bloodstream of many black citizens is not

clearly traceable. Scientists believe that it developed centuries ago as a defense of the system against malaria. We do know that those who have what is known as the sickle cell trait—one such gene—do resist malaria remarkably well. When a child is born with two such genes, however, it ceases to become a blessing and becomes a curse. Such a child will probably not live beyond 20 years and all through those years it will suffer much pain at irregular intervals. Once this condition exists there is little to be done.

Research goes on but it is well recognized that more research would be desirable. This bill would provide some extra money for that purpose. It is not claimed here that the problem is being neglected. On the contrary, there are Government programs of several types presently underway. Research supported by NIH amounts to about \$1.5 million. Maternal and Child Health Services under social security give some help as does the new family planning activities approved by Congress last year.

This bill is intended to give somewhat greater direction and support to the effort and particularly to upgrade and emphasize the aspects of screening and counseling. This is vitally important because adults with the sickle cell trait are very apt to produce a child with the disease and this is a most unsettling thought. By encouraging adults to be tested before marriage the incidence can be greatly lowered. It is basically a family planning problem. Information must be developed and disseminated to bring the story to those who may be carriers. There are probably 2.5 million people in the United States who carry the sickle cell trait and about 50,000 with the actual disease.

The bill before us today provides \$25 million for fiscal year 1973 for both research and screening. The administration has already provided about \$15 million for these purposes in its budget and probably will not go much beyond that, but some further leeway is provided in case progress indicates the desirability of stepping up the effort later in the year which will extend to July 1973. The next 2 years provide \$35 and \$45 million, respectively, and it is hoped that progress made during the first year will make the use of such sums practical. The Senate bill passed last December provides considerably more and will have to be comprised when we later meet in conference.

I recommend passage of H.R. 13592.

The question is asked as to how this bill compares with the legislation in the other body. The Senate passed fairly the identical bill in December 1971 as S. 2676. Their figures for 1973, 1974, and 1975 were as follows: \$33 million, \$49 million, and \$65 million. With the exception of the fiscal year 1975, our figures very much approximate those of the Senate. I would anticipate that when we go to conference we will have no difficulty in resolving that question. Actually I believe our figures are adequate in this field.

Personally I would sort of stand on our figures pretty firmly insofar as I have anything to do with a conference.

Mr. HALL. Mr. Chairman, will the gentleman yield at that point and along that line?

Mr. SPRINGER. I yield to the gentleman from Missouri.

Mr. HALL. I appreciate the statements of both the chairman and the ranking minority member of this committee. Certainly the time has come when we should and must do something about this dread genetic disease. There is a point to which I shall speak later, but I wish now to rise to the point of funding in view of the recent technological breakthroughs in the testing and mass surveys that can be made using special urea solutions and computers which are already in operation for immediate determination, and at 2 cents per test instead of a dollar a test. Did the committee have this under consideration rather than using the proprietary Sickledex test?

Mr. SPRINGER. All of what the gentleman has talked about was gone into by the committee. It is my understanding that as of yesterday, when we were talking about this, not in the subcommittee, we discussed that fact that the matter of testing is something more complicated than it is pictured in the amendment which will later be offered. It is a little more difficult in testing, but outside of that we think what we are doing at the present time is not adequate, but we believe we are approaching something which will be of great value.

Mr. HALL. Mr. Chairman, will the gentleman yield further?

Mr. SPRINGER. I yield to the gentleman from Missouri.

Mr. HALL. Possibly I did not get my point across. I think we have a technical breakthrough here, not only in the research requisite for origin and diagnosis of the disease, but for mass surveys and isolation of those who carry it, with all the advice, with all the treatment they require, and, finally, in the treatment of the disease, but specifically in a technique of mass survey that can be computerized. These are metabolic and molecular breakthroughs. Indeed, it is being done in some of the services—NIH and the U.S. Army, plus the Veterans' Administration. If we were to collaborate and coordinate with those people so that the time is ripe for the birthing of this self-help domestically, to possibly eliminate the disease, much in the same manner as polio was eliminated, simply by taking a cube of sugar with urea, if and when it is done.

Therefore, I am complimenting the committee, but at the same time I am hoping that you are aware of the reduced cost of mass surveys and testing at the time that you set up the appropriation, and I hope you will stick by your guns, even in conference, if it is found that you do not need all of this funding, that it can be reduced, rather than added onto as requested by the other body.

I include the following:

SICKLEDEx TEST FOR HEMOGLOBIN S—A CRITIQUE

(By Robert M. Nalbandian, M.D.; Raymond L. Henry, Ph. D.; Jeanne M. Lusher, M.D.; Lt. Col. Frank R. Camp, Jr., M.S.C., U.S.A.; and Col. Nicholas F. Conte, M.D., M.C., U.S.A.)

(The Sickledex test has been proposed as "specific" for hemoglobin S in the absence of a disclosure of the principle and reagents. Its convenience and simplicity has already assured widespread usage. But serious errors will be made unless the chemistry of the test is understood and coupled with the insights of modern molecular hematology. Evidence indicates that the Sickledex test consists of potassium phosphate, sodium dithionite, and saponin. When this test is used with insight, much diagnostically valuable information can be obtained.)

The proprietary Sickledex test is rapidly gaining favor as a diagnostic test for hemoglobin S because of its speed, simplicity, and convenience.¹⁻⁷ This wide usage is proceeding in the absence of knowledge of the reagents and the principle of the test. However, when in 1968 Diggs and co-workers proposed the Sickledex test,¹ the reagents and principle were not disclosed. While the Sickledex test is an excellent screening test, it has distinct limitations unless molecular basis for the test is clearly understood.

Studies in our laboratory⁸ led us to the conclusion that the Sickledex reagent consists of a quantity of phosphate buffer, sodium dithionite, and saponin and so was very similar to the Itano solubility test.⁹ If into such a reagent system an appropriate quantity of hemoglobin S in intact red blood cells is introduced, a series of events will occur as follows: (1) the cells will lyse; (2) the hemoglobin S tetramers will deoxygenate; (3) the conditions at the molecular level will be ideal for the formation of microfilaments and microcables;^{10,11} (4) when hemoglobin S is present a nematic crystal system will form.^{12,13} The presence of hemoglobin S will thus be recognized by the appearance of a turbid solution, which in the Sickledex test is regarded as positive. However, under such conditions not only will hemoglobin S form a turbid nematic liquid system but so also will other non-S sickling hemoglobins such as C (Harlem), C (Georgetown), Bart's (personal communication, H. Lehmann, July 1969), H,¹⁴ and possibly others too.

In an attempt to confer additional specificity to the test, Henry et al.¹⁵ and Nalbandian¹¹ and co-workers modified the Sickledex test by the introduction of urea, since it has been shown that urea would disperse those nematic liquid crystal systems uniquely caused by hemoglobin S (or its structural variant hemoglobin C [Harlem]). In our own laboratories (Blodgett Memorial Hospital, Grand Rapids, Mich., and US Army Medical Research Laboratory, Fort Knox, Ky) we have prepared reagents made from potassium phosphate, sodium dithionite, and saponin which function entirely satisfactorily and are in no detectable way inferior to the proprietary and undisclosed Sickledex solution. This has been achieved at a reagent cost of about 2 cents per determination in contrast to the substantially higher cost of the proprietary Sickledex test reagent.

Knowledge of the presumptive reagents, and principle of the test lead to an understanding of false-positive and false-negative reactions, and the pitfalls of faulty technique. These have been well discussed in part by Diggs and Walker.⁷ False-negative Sickledex test reactions may be obtained by (1) inadequate quantities of blood from anemic patients (hemoglobin levels below 10 gm/100 ml or hematocrit readings less than 30%); (2) deterioration and inactivity of the reducing agents (probably sodium dithionite); (3) deterioration and inactivity of the lytic agent (probably saponin); (4) various improper techniques in illumination and visualization of the lined reader scale; and (5) quantities of hemoglobin S too small to detect as at birth and, possibly, in transfusions. False-positive tests have been recognized in the

Sickledex to be due to (1) polycythemic blood or the addition of too much blood in relationship to the quantity of reagent; (2) interference by dysglobulinemias such as macroglobulinemia, myeloma, and cryoglobulinemia. We reiterate that hemoglobin Bart's will give a false-positive Sickledex test, and so may non-S sickling hemoglobins such as C (Harlem), a clinically benign disease, C (Georgetown), possibly Alexandria,¹⁶ and Heinz-body-forming hemoglobins.

It is generally not appreciated that hemoglobin S is genetically delayed and does not begin to become the predominant hemoglobin component until after three months of age.¹⁶ Maximal levels of hemoglobin S are not achieved until 5 to 6 months of age. Hence, it is pointless to attempt to screen black babies for the presence of hemoglobin S before 6 months of age by any test unless extraordinary measures are employed. Indeed, it may give erroneous results, since hemoglobin Bart's may be present at birth in some cases of thalassemia.¹⁶

All hemoglobin specimens which test positive by the Sickledex test should be studied by electrophoresis and, if desired, by the urea modification of Henry et al (see above).

FOOTNOTES

¹ Diggs LW, Schorr JB, Ascari WQ, et al: A new diagnostic test for hemoglobin S. Presented as an exhibit before the 22nd joint annual meeting of the American Society of Clinical Pathologists and the College of American Pathologists, Miami Beach, Fla., Oct. 1968.

² Loh WP: A new solubility test for rapid detection of hemoglobin S. *J Indiana Med Assoc* 61:1651-1652, 1968.

³ Diggs LW, Durst D, Walker RD: The test tube turbidity method for detection of HbS. Read before the International Congress of Hematology, Munich, Germany, Aug 1970.

⁴ Ballard MS, Radel E, Sakhae S, et al: A new diagnostic test for hemoglobin S. *Pediatrics* 76:117-119, 1970.

⁵ Canning DM, Huntsman RG: An assessment of Sickledex as an alternative to the sickling test. *J Clin Path* 23:736-737, 1970.

⁶ Loh WP: Evaluation of a rapid test tube turbidity test for the detection of sickle cell hemoglobin. *Amer J Clin Path* 55:55-57, 1970.

⁷ Diggs LW, Walker R: Technical points in the detection of sickle cell hemoglobin by the tube test. *Amer J Med Techn* 37:33-36, 1971.

⁸ Nalbandian RM, Kessler DL, Henry R: Nonspecificity of tests for hemoglobin S. *Bull Pathol* 10:277, 1969.

⁹ Itano HA: Solubilities of naturally occurring mixtures of human hemoglobin. *Arch Biochem Biophys* 47:148-159, 1953.

¹⁰ Nalbandian RM, Henry RL, Nichols BM, et al: The Murayama Test: I. Evidence for the Modified Murayama Hypothesis for the Molecular Mechanism of Sickling, report 893. Fort Knox, Ky, US Army Medical Research Laboratory, 1970.

¹¹ Nalbandian RM: *Molecular Aspects of Sickle Cell Hemoglobin: Clinical Applications*. Springfield, Ill, Charles C Thomas Publisher, 1971.

¹² Harris JW: Studies on the destruction of red blood cells: VIII. Molecular orientation in sickle cell hemoglobin solutions. *Proc Soc Exp Biol Med* 75:197-201, 1950.

¹³ Perutz MF, Mitchison JM: State of haemoglobin in sickle-cell anaemia. *Nature* 166:677-679, 1950.

¹⁴ Heller J, Yakulis V: A simple and reliable test for sickling. *JAMA* 203:990, 1968.

¹⁵ Henry RL, Nalbandian RM, Nichols BM, et al: An Automated Screening Method for the Specific Detection of Homozygous and Heterozygous S Hemoglobin, report 898. Fort Knox, Ky, US Army Medical Research Laboratory, 1970.

¹⁶ Nalbandian RM, Henry RL, Camp FR Jr, et al: Embryonic, fetal, and neonatal hemoglobin synthesis: Relationship to abortion

and thalassemia. *Obstet Gynec Survey* 28: 185-191, 1971.

NEW STRATEGY FOR SICKLE CELL DISEASE

The importance of the two papers by Nalbandian and his associates published elsewhere in this issue of *The Journal* is that they demonstrate how, armed with determination and a suitable screening test, concerned civil authorities can efficiently survey a population at risk from sickle cell disease.

Unfortunately, there is still considerable doubt about what type of treatment should be offered to those affected persons such mass surveys bring to light. Despite the wide publicity it has attained, the use of intravenous urea as a remedy for the painful sickle cell crisis has many problems associated with it, though these are currently being evaluated by investigators in several research centers.¹

The protocol recommended by Nalbandian² requires intensive care facilities, venous catheterization with the tip positioned by x-ray in the superior vena cava and an indwelling urinary catheter. A sterile 30% solution of urea in 10% invert sugar is infused slowly to maintain levels of blood urea nitrogen in the range of 150 to 200 mg/100 ml. Urea and electrolyte concentrations are measured at hourly intervals. Other chemical and hematological procedures are recommended. Water balance is carefully monitored. The infusions are continued until "the patient reports complete or virtually complete relief from pain."

Since the pains associated with the crises are due to varying degrees of focal stasis of sickled erythrocytes leading to hypoxia, perivascular edema, and infarction, and since the duration of crises is variable, it is difficult to evaluate therapeutic effectiveness. One of the handicaps of any form of treatment is that the drug cannot go to the focal area involved because the blood vessels are obstructed by sickled cells. It is therefore imperative that treatment be started before infarction and necrosis have occurred.

The disadvantages of any form of intravenous therapy for recurrent sickle cell crises are the necessity of admissions to emergency rooms and hospitals, the technical difficulties, and the expense. Skilled intravenous teams are necessary, but are in short supply. In infants and children, those who most often have painful crises, intravenous therapy is impractical, while adults may have veins that are hard to find and to cannulate, especially if they have been used frequently in the past. During the severe crises patients writhe in agony, object to restraint, and find it difficult to hold still for hours or days while intravenous solutions slowly infuse. It is erroneous to state that treatment with urea is inexpensive just because commercial urea costs approximately \$1 per pound. By the time the urea has been prepared in intravenous kits together with the sugar solution solvent, the cost is many tens of dollars, while to this sum must be added the cost of admission to an intensive care ward, of the hematological tests, and of the physician's fee.

Urea owes its effectiveness to the fact that it easily traverses cell membranes, breaks molecular bonds, and causes the helical aggregates (tactoids) of reduced hemoglobin within the red cells to revert to the soluble state. Unfortunately, urea in high concentrations is also capable of causing alterations in molecules other than sickle cell hemoglobin and in cells other than erythrocytes.

Whether or not urea fulfills its expectations and proves to be the answer to sickle cell crises, patients with sickle cell anemia

and related diseases owe a debt of gratitude to Dr. Nalbandian and to other investigators for helping to increase public awareness and concern about the magnitude and seriousness of the problem, for exploring new methods of treatment, for developing more specific tests, for the introduction of an automated test, and for the popularization of mass screening programs.

The idea that chemical engineering at the molecular level may make it possible to overcome the handicaps of an hereditary abnormality serves as a challenge to explore the possibilities of other drugs^{3,4} that may be as effective as urea, while being easier to administer and of less toxic potential.

L. W. DIGGS, M.D.

MEMPHIS.

Mr. SPRINGER. May I say in reply to my colleagues from Missouri that not only did we go into this funding quite carefully, but I have also talked to the chairman of the Subcommittee on Appropriations which handles this matter. He intends to make a statement a little later in the day as to what has been done to date. We do not want to leave the impression that nothing in this field has been done and that we are originating something new. I would like all of our colleagues to know what has been done and what this legislation proposes to do.

In addition, the gentleman from Kentucky, I think, wants to reply to a question that my distinguished colleague from Missouri brought to his attention a moment ago.

Mr. CARTER. In response to the distinguished gentleman from Missouri, say the committee has gone into the cost of these tests and, indeed, there has been a breakthrough which we need to take advantage of, and we trust that it will cost less money than was thought previously.

I thank the distinguished gentleman for yielding.

Mr. SPRINGER. Mr. Chairman, I yield 6 minutes to my distinguished colleague, the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Chairman, a disease that attacks one of each 500 children in the Nation, kills more than half its victims before they are 20 years old and which inflicts great pain and crippling is hardly the sort of malady that would normally go neglected in terms of research and prevention in a nation such as ours.

If a nation of enormous generosity toward funding the eradication of countless diseases around the globe, many of which never were important threats in the United States; in a nation in which biomedical research will not rest until ways have been found to deal effectively with all threats to American health—in such a nation a disease such as sickle cell anemia would likely have a difficult time perpetuating itself. We could well expect the kind of campaign that would be mounted to deal with such a heinous child-killer.

³ Cerami A, Manning JM: Potassium cyanate as an inhibitor of the sickling of erythrocytes in vitro. *Proc Nat Acad Sci* 68:1180-1183, 1971.

⁴ Kraus LM, Kraus AP: Carbamyl phosphate mediated inhibition of the sickling of erythrocytes in vitro. *Biochem Biophys Res Comm* 44:1381, 1971.

But, as you all know, such has not been the case. American medical crusades have been directed against any number of ailments of similar or reduced threat to the American populace. Yet attempts to understand and control sickle cell anemia have largely been of the token variety.

I speak today not to argue whether or not the most significant reason for this past misplacement of medical care priorities has had to do with the reality that sickle cell anemia strikes not one of every 500 children in America, but rather one of every 500 black children. This neglect may indeed be an accurate production of the present sociological climate in this Nation; but arguing this premise is not my present concern.

It is my concern, as a Congressman and as a physician, to see that this neglect of a disease that afflicts about 2 million black Americans is dealt with immediately in correct proportion to its degree of threat to American health.

In my estimation, the provisions of these bills presently being considered represent an effective early response to that threat. That is why I helped sponsor them; the \$90 million asked for here should be granted with no more delay to research and counsel people about this child-killing disease in repayment to black America for this period of gross medical neglect. The Nation at the very least has a moral obligation to provide immediate facilities and resources for counseling on the scope of the disease.

People have a right to know if they are unknowingly carrying the sickle cell trait.

The program of voluntary testing must be extensive enough to reach all black persons, so couples who have recessive sickle genes will know they do, thus enabling them to decide if they want to risk the 1 in 4 chance that any children they create together will be stricken with this killer disease. To keep these persons needlessly in the dark any longer would be unimaginably cruel.

The second, more clear-cut concern is to reduce that 1 in 4 ratio.

Medical research has conquered all manner of killers in the past; a concerted effort, at long last, by the same medical researchers could do the same to sickle cell anemia. We will never know what success we can have until we give it a far harder try than ever we have in the past.

I do not confirm or reject all the rhetoric connected with the history of nontreatment of sickle cell anemia. This Congress must not concern itself with such rhetoric until there is time for retrospect after this child-killer is eradicated from this Nation. I have no patience with delaying rhetoric when the lives of children are at stake.

I urge my fellow Congressmen to join me in support of this truly emergency legislation. Each moment spent here in argument is time wasted for the saving of lives.

Mr. NELSEN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the distinguished gentleman from Minnesota.

Mr. NELSEN. Mr. Chairman, I wish to associate myself with the remarks of

¹ Scott RB: Urea therapy in sickle-cell anemia. *New Eng J Med* 285:1025-1026, 1971.

² Nalbandian RM (ed): *Molecular Aspects of Sickle Cell Hemoglobin: Clinical Applications*. Springfield, Ill. Charles C Thomas, 1971.

the distinguished gentleman in the well and point out to the House of Representatives that our subcommittee is particularly fortunate in having our good friend, the gentleman from Kentucky, on the committee. He is a practicing physician. Likewise, on the Democratic side we have Dr. Roy, the gentleman from Kansas, so we have two medical doctors on our subcommittee which deals with all these health problems. I believe that our country is fortunate to have the very qualified expert services of these two gentlemen.

Mr. CARTER. Mr. Chairman, I thank the distinguished gentleman for his very kind remarks.

I would like to say, in return, not because of the compliment the gentleman paid me, but because I really know and feel over the years that the gentleman has been one of the greatest legislators in this body, and that he is a great compromiser.

I am in hopes that in the near future Mayor Washington in his wisdom will see fit to name the vocational training school here in the District of Columbia, which was fathered by the distinguished gentleman from Minnesota, the Ancher Nelsen Vocational School.

Mr. NELSEN. I thank the gentleman. Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the Delegate from the District of Columbia, Mr. WALTER FAUNTROY.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 13592 and to commend the fine work of this committee, and in particular the fine work of its subcommittee, whose chairman, PAUL ROGERS, was so helpful. The speed with which the committee held hearings and reported this bill indicates to me the concern of many Members of Congress about the tragedy of this dreaded disease which affects primarily black people causing their death and heaping upon them a pain and suffering which no one should have to bear. It is a pain and suffering which is made harder because of the dearth of programs and the dearth of funds which could, if available, perhaps find the cure and an alleviation of the affliction.

Sickle cell anemia strikes one of approximately every 500 young black children killing more than half of them before they reach the age of 20. It is a genetic malady whose horrors are passed from generation to generation recurring predictably when the necessary genetic conditions are present. The gene is normally passed onto the children of parents who both carry the sickle cell trait. Approximately one in 12 blacks carry the trait with the chance of both parents carrying the trait being one in 144.

Blacks who inherit the disease itself suffer periodic crises in which the normally spherical red blood cells are distorted into crescent-like shape. These deformed cells block narrow capillaries, depriving nearby tissues of needed oxygen and causing excruciating pain. Persons who have only the trait generally do not need care for this condition, as it generally does not cause any difficulty except in instances of extreme stress at certain altitudes or during certain phases of other ailments.

Each major crisis—and there is an average of three per year—requires an average of 7 days hospitalization. In addition, there are generally four to five less serious crises that, while they do not require hospital treatment, require varying degrees of restricted activity. It is not necessary to detail the distraught feelings and the financial loss that affect parents whose children are suffering with this disease.

Yet, the problem instead of decreasing, as are many others, is becoming greater. The majority of blacks now live in urban areas. For these areas, because of the incident rate, the disease becomes not just a significant health problem, it has become a prevalent health problem demanding immediate attention. To understand the meaning of this, one must look at the incident rates for other major congenital and genetic childhood diseases. Muscular dystrophy occurs at rates of one per 5,000 births, cystic fibrosis at one per 2,940, and diabetes mellitus at one per 2,500, while sickle cell anemia occurs at the rate of one per 500. In 1967, there were 1,155 cases of sickle cell anemia, 813 of muscular dystrophy, and 1,206 of cystic fibrosis.

Here in the District of Columbia, where the black population approaches 70 percent, it is estimated that the costs of care for the 1,000 afflicted children approaches \$4 million. And, the disease far exceeds childhood diabetes, nephrosis or cystic fibrosis as a cause of illness.

Like many other diseases, the key to effective palliative treatments is early diagnosis. Today, there are inexpensive screening tests which can be offered prior to marriageable age.

Those who are found to carry an abnormal hemoglobin gene could be counseled to be sure that their mates were tested. Only in this way can heterozygote pairs be detected, and only in this way can informed decisions be made about childbearing among "at risk" parents. This is not to suggest that a couple will decide to have no children; it is to suggest that whatever they do will be done on the basis of an informed and intelligent decision.

The bill (H.R. 13592) which is now before you, establishes a national program for diagnosis, prevention, and treatment of sickle cell anemia, together with screening and counseling programs and information programs. My original bill and a similar measure that passed the other body are more far reaching than the bill reported to you today. These other bills would have brought the Veterans' Administration and the Department of Defense directly into the screening programs; but, while these provisions were deleted by the committee, the bill I am urging you to support is still a giant step which, if you will take it, is a most important commitment to the finding of a cure and a prevention of this dreaded disease.

Since the purpose of this bill is to provide a coordinated and overall effort against sickle cell disease, the primary thrust of the bill, in addition to research, is the providing of funds for the creation of screening and counseling programs.

Screening will allow black parents to learn whether their combination of genes presents a high chance of their passing the disease onto their offspring. Based on this information, counseling programs can advise the parents of alternatives. As Dr. Robert B. Scott has written in the *AMA Journal*—

Whether a young couple will decide to have no children or plan a family of limited size or disregard the knowledge of the risk would be entirely their own decision, one which no one could make for them. However, the opportunity to protect their families from the tragedy of sickle cell anemia will have been offered.

This is the reason that I had hoped we would have included the Department of Defense because it is here that so many young men come through in a systematic and orderly way. Until we have a volunteer army, I think it is safe to presume that every young man will be examined by the Armed Forces medical people who could determine if he were a trait carrier and then either offer him counseling or direct him to the places where counseling is available. If we had done this, we would have maximized the utilization of the services that we are providing in this authorization.

I point this out merely because of the enormity of the tragedy when uncounseled persons marry and have, through chance, children with the disease. We must do something to alleviate this misfortune. The start to that "something" is in this bill with those above mentioned aspects and its second thrust of providing grants for research, and the development of programs for diagnosis, prevention and treatment of sickle cell anemia. Under this provision, funds would be made available to public and nonprofit private entities such as medical schools, hospitals and foundations, for the development of programs in basic research, in reaching those people who are not now reached by any existing program.

Mr. SATTERFIELD. Will the gentleman yield?

Mr. FAUNTROY. I am glad to yield to the gentleman.

Mr. SATTERFIELD. I would just like to comment on one thing. The gentleman mentioned that the Senate bill was more extensive than ours. I assume you are referring to that part of the Senate bill dealing with the Veterans' Administration. I just want to take this opportunity to assure you and the House that, although the committee bill does not include the Veterans' Administration, the Subcommittee on Hospitals of the House Veterans' Affairs Committee has conducted public hearings on this subject and is now in the process of attempting to develop legislation.

Mr. FAUNTROY. Thank you. I will look forward to passing that, also, when it comes through.

Mr. SPRINGER. Mr. Chairman, I yield as much time as he may consume to the gentleman from New York (Mr. KEMP).

Mr. KEMP. Mr. Chairman, I rise in support of H.R. 13592, the National Sickle Cell Anemia Control Act. On January 31, 1972, I introduced H.R. 12750 which also provides for the control of sickle cell anemia and is similar to the measure we have before us today.

At this point I include an article from the December 2, 1971, issue of the *Buffalo Challenger*, a black weekly, and I call attention to the quote of Dr. Lemuel Diggs where he emphasizes that episodes of the disease "are considered medical emergencies":

DRIVE URGED FOR SICKLE CELL ANEMIA

Sickle cell anemia, a hereditary disease that strikes hundreds of thousands of people—Black and white—throughout the world requires much more basic laboratory and human research before doctors can discover a cure for the blood disorder, experts concluded after a two day symposium that ended in New York yesterday. (11/19/71).

Physicians also told the 1200 symposium participants at the Commodore Hotel that the number of babies with sickle cell anemia born to future generations could be reduced substantially if more genetic counseling services were offered to patients.

The doctors urged that continuous counseling be given in the new cases detected by blood tests at the screening clinics that are springing up across the country.

Symposium scientists also said that more could be done by applying what is already known in the everyday medical care of sickle cell patients.

Further, the doctors stressed that much misinformation has been disseminated concerning what the disease does to its victims in this country. Africa, Greece, and other Mediterranean countries, India, Central and South America and elsewhere.

Sickle cell anemia, which was the first disease found to result from derangements of molecular machinery, affects people in two ways—one serious, the other minor. A laboratory test called hemoglobin electrophoresis can distinguish between the two forms—the disease and the trait.

In the overwhelming majority of cases no health hazard exists for the person with sickle cell trait, doctors emphasized at the symposium. An estimated 10 per cent of the Black population in this country carries the sickle cell trait.

Dr. Yvette F. Francis, who directs the sickle cell clinic at Jamaica Hospital here said, that each time a woman with a sickling trait becomes pregnant from a man with the sickling trait, the chance is one out of four or 25 per cent, that the baby, regardless of sex will get the disease.

No health problem exists, the geneticists said, if a person without the sickle cell trait marries someone with the sickle trait. Half the children produced by such couples would have the harmless sickle cell trait, but none would have sickle cell anemia.

Sickle cell anemia is gaining increasing public attention, partly because it concerns at least two million American Blacks and also because politicians are paying more attention to the problems and costs of delivering health care.

These were among the reasons why the Medical Society of the County of New York, National Foundation March of Dimes and Foundation for Research and Education in Sickle Cell Disease sponsored the symposium about a disease that has existed since ancient times, but was first reported in a medical journal only in this century.

Sickle cell disease results because too many of its victim's red blood cells are destroyed, thereby making the person anemic.

Anemia is the condition that results when the blood has too few red cells to carry the oxygen needed to meet the body's biochemical demands.

For reasons that scientists said, they did not fully understand, many of the red cells in sickle cell anemia patients become knife-like and fragile when exposed to low amounts of oxygen.

When red cells, sickle, they clog small

arteries, cut off further oxygen supplies and perpetuate a vicious cycle that can seriously damage organs such as the kidney, lung, bone or brain.

Some sickled cells, depending on the duration of their exposure to low amounts of oxygen, can resume their normal oval shape when exposed to high levels of oxygen. Nevertheless, sickle cells survive for shorter periods than the 100 day life span of normal red cells.

Beginning in infancy sickle cell anemia can produce bizarre painful symptoms anywhere in the body of a person who inherits a double dose of the sickle genes.

Dr. Lemuel W. Diggs of Memphis said that the disease usually occurred in repeated, painful episodes, called "crises," that are considered medical emergencies.

Mr. Chairman, that is exactly what we have before us today—a medical emergency. One just has to be impressed with the magnitude of the extensive manifestations and complications that this disease can produce. Here is a condition that among other things can produce severe pain, blindness, strokes, lung clots, heart attacks, heart failure, miscarriages, gallstone, chronic healing-resistant skin ulcers, poor weight gain, mimics the clinical picture of rheumatic fever, and appendicitis, leads to frequent infectious complications such as pneumonia, septicemia, and meningitis, and then seemingly, so as an act of kindness to the problems just elucidated, death itself.

The magnitude of 2 million people in this country are affected with this condition and we are practically all aware of other diseases such as diabetes, tuberculosis, and leukemia. It is appalling that although the latter occur with less frequency, many people do not even know the sickle cell anemia is in existence.

Mr. Chairman, sickle cell anemia is a hidden, stalking killer, and can be likened to the closing lines from the immortal pen of Edgar Allen Poe's classic tale of striking similarity, "The Masque of the Red Death." Unless we likewise chart the proper course of action, "this thief in the night, too, can spread darkness, decay, and death over the inimitable dominion of many a proud and beautiful people."

Mr. STAGGERS. Mr. Chairman, I yield whatever time he may need to the gentleman from Missouri (Mr. SYMINGTON), a member of the subcommittee.

Mr. SYMINGTON. Thank you, Mr. Chairman.

I simply wish to say that I join in the remarks, particularly those of my colleague on the committee, Dr. CARTER, and I share the views of the distinguished ranking member of the committee, Mr. NELSEN, that through the presence and the active interest of the two men of medicine who serve on the committee, we have benefited greatly. We have also benefited on the floor from hearing from my own distinguished colleague from Missouri, Dr. HALL. We are indeed lucky to have men with these disciplines available when we try to get this type of legislation through.

Basically, I think all three of them have agreed that this bill is essentially preventive medicine in and of itself, and this is the kind of medicine that we had better start practicing in this country, considering the cost of curative medicine.

This bill recommends counseling, which will be absolutely essential in order to help stabilize the number of afflicted people, and give us time—and we are indeed going to need a little time—to do the research that this bill also provides for.

Let us hope in another few terms of Congress we can consider this job done.

Mr. EDMONDSON. Will the gentleman yield?

Mr. SYMINGTON. I am glad to yield to my colleague from Oklahoma.

Mr. EDMONDSON. Mr. Chairman, I want to congratulate the gentleman on his thoughtful statements about this bill and on the significance of it as a new approach to a very serious national health problem. We need to make a commitment of this kind to solve such problems in our country.

I would like to commend the committee for the fine work on this bill. I support it enthusiastically.

Mr. SYMINGTON. I do want to state on my own behalf and I am sure on behalf of other members of the subcommittee that we give our thanks to the chairman of the subcommittee, Mr. ROGERS of Florida, for the leadership he has shown in this matter.

Mr. STAGGERS. Mr. Chairman, I yield time he may require to a member of the subcommittee, Mr. ROY of Kansas.

Mr. ROY. Thank you, Mr. Chairman. I rise in support of the bill.

I would also like to associate myself with the remarks of the other members of the subcommittee and would like to congratulate our chairman Mr. ROGERS and Mr. NELSEN, the ranking minority member, for their expeditious handling of this legislation.

As an obstetrician and gynecologist, I am acutely aware of the need for genetic counseling, the provision for which is provided for by legislation, for those who are likely to have children with sickle cell anemia. I believe this is an especially important part of this bill.

Sickle cell disease is a disease affecting the red blood cell which until recently has been neglected by our society. It affects primarily the people of African origin. It is estimated that 10 percent of approximately 2.5 million black men and women in our country are carriers of the sickle cell trait. Additionally, it is calculated that one in 500 blacks will have the disease. If two people with the sickle cell trait marry, one in four of their offspring may have the disease, and two in four may carry the trait.

The people who are affected by sickle cell anemia are subjected to approximately three "crises" a year which consist of extreme pain and swelling of hands and feet, joints, and abdominal pain. Over a period of time, leg ulcers and jaundice develop, bones become abnormally shaped; kidney failure, heart failure and blindness may also develop. The most tragic result of this disease is that very few people with it live beyond the age of 25.

This situation must not be allowed to continue. This bill would give us the means to carry out voluntary screening and counseling for sickle cell trait and anemia of our fellow black Americans.

In this way, those who carry the trait will be knowledgeable of its potential damage. This bill also provides funding for research into the treatment of this disease for which there is no known treatment.

I strongly urge unanimous passage of this bill as a step in the attack of this dread disease.

Mr. STAGGERS. Mr. Chairman, I would like to say that I agree with the statements made about Dr. CARTER and Dr. ROY and Mr. NELSEN and PAUL ROGERS and every member of the subcommittee. They have worked long and hard on all of the bills that have come out. Without fear of contradiction, I can say that this subcommittee turns out probably twice as much legislation as any other subcommittee in the House. And, all of it is for the benefit of all the people of this land.

We have neglected too long the health of America. We are just now beginning to come to the point where we realize that this is one of our weak points.

In addition, Mr. Chairman, I would like to say that the subcommittee certainly has done a great job and I again want to compliment each and every member of this subcommittee for the time they have put into this program and the work which they have done on it.

I now yield, Mr. Chairman, to the distinguished chairman of the subcommittee, the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. I thank the chairman.

Mr. Chairman, I thank our distinguished chairman of the full committee for his kind remarks on behalf of all of the members of the subcommittee. Under his leadership and direction and his urging and prodding the subcommittee has been a very active subcommittee. It has tried to do what in my opinion is a competent job for the Congress and for the American people.

Mr. Chairman, this bill that we have before us today, H.R. 13592, is an important bill and, particularly, it is an important bill to Americans all over the country in every community.

Sickle cell anemia is a genetically transmitted blood disorder which affects an estimated 50,000 Americans and it is believed that another 2.5 million Americans carry the genetic trait which may cause the disease to be transmitted to their offspring. The disease is marked by extremely painful "crises" caused when sickle cell hemoglobin is deprived of oxygen and the normally round doughnut-shaped red blood cells take on a sickle or quarter moon shape. These sickled cells are unable to pass through the capillaries and jam up causing the oxygen deprived tissue to die. Afflicted persons are also extremely susceptible to infection and have an average life span of about 20 years.

The existence of sickle cell anemia, which afflicts black people almost exclusively, has been known for over 60 years. Yet, as recently as 1968 a survey in Richmond, Va., found that only 30 percent of those questioned had even heard of the disease. Medical researchers

referred to sickle cell anemia as the forgotten disease until very recently. There is no known cure for the disease and most treatment methods are in experimental stages at present. Until very recently federally funded research in this area was virtually nonexistent.

Mr. Chairman, this bill is the first meaningful effort by the Federal Government in dealing with this significant health problem, sickle cell anemia. The bill provides for a national program to combat sickle cell anemia under a new title XI of the Public Health Service Act. The bill provides authorizations for \$75,000,000 for screening, counseling, and education programs, and \$30,000,000 for research and programs for diagnosis, prevention, and treatment of sickle cell disease over the next three fiscal years. I might also add that this program is strictly voluntary and the law would provide for strict confidentiality of all test results, records, or other information gathered as a result of participation in this program.

Mr. Chairman, sickle cell anemia is a real problem and it must have a real solution. We must move now to bring the resources of the Federal Government to bear on this problem and we must initiate programs which will hopefully result in the prevention of this disease and treatment methods for those 50,000 Americans who presently suffer from the ravages of sickle cell anemia and the 2,500,000 who are carriers. Certainly these people have a right to expect to live a normal life free from the daily expectation of pain and even death they now face.

Mr. Chairman, this legislation does zero in on a specific disease. It does not go to every blood disease in the country. We are trying to do something for this specific disease—sickle cell anemia. That is the only disease which the hearings zeroed in on. Until the committee has a chance to spread upon the record the necessity of doing something for other specific diseases and to develop information concerning what the research effort ought to be and in what direction it ought to be geared—then I hope the House will sustain the committee in having as its sole purpose the zeroing in on sickle cell anemia.

I would urge that this House pass this bill, showing that we are serious in getting to the solution of this problem of sickle cell anemia.

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to the distinguished minority leader, Mr. GERALD R. FORD.

Mr. GERALD R. FORD. Mr. Chairman, I take this time only because within the last several years in my hometown of Grand Rapids, Mich., some excellent research and testing work was done on the problem of sickle cell anemia. As a result of those tests in the Grand Rapids school system, under the distinguished leadership of Dr. Robert M. Nalbandian, some interesting and constructive results were achieved. As a consequence of this leadership in the city of Grand Rapids, under Dr. Nalbandian, a local television station WZZM—channel 13—

undertook to put together a documentary, at their own expense, telling the story of sickle cell anemia.

I am glad to report that that television documentary, solely put together under talent, has been nominated as one of ten candidates for a television Emmy award in the documentary field. Naturally, I would hope that this locally produced television documentary "Paradox of Neglect," would be selected as the winner in the Emmy competition. However, whether that particular documentary wins or not, the Grand Rapids school system under the technical leadership of Dr. Nalbandian has performed a superb service in the medical field by conducting these tests with the black school children in Grand Rapids.

I have in my possession a number of technical documents describing the work that was done by Dr. Nalbandian and his team. The results that have been achieved certainly justify the program. These results were achieved at minimal cost and expense. I freely admit that prior to my lengthy conversations with Dr. Nalbandian I did not understand what the disease was and knew less about the seriousness of it. But after seeing the documentary film produced by WZZM-TV and after spending a considerable amount of time with Dr. Nalbandian, I want to compliment the Interstate and Foreign Commerce Committee for launching this expanded attack upon sickle cell anemia. This disease poses a most serious problem. This legislation will get us started on the right kind of program.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Illinois.

Mr. SPRINGER. Mr. Chairman, may I say that the subcommittee is familiar with the work that has been done in the Grand Rapids schools, and it is excellent. It is too bad that we cannot insert in the RECORD the film which the distinguished minority leader has mentioned, but I trust that when we get back into the House that the gentleman will take the liberty of inserting the material, which I know he has at hand, in the RECORD, in order that our colleagues may know a summary of what has been done in this field in Grand Rapids.

Mr. GERALD R. FORD. Mr. Chairman, I thank the gentleman from Illinois (Mr. SPRINGER) for his comments.

I will place in the RECORD the material that Dr. Nalbandian and his associates have given me.

I say further that if you have not seen this television documentary, "Paradox of Neglect," you should make an effort to do so. It is the most dramatic depiction of sickle cell anemia that I have ever seen. It is much easier to understand from seeing and hearing than it is to understand from reading. I would hope that at some future time this film would be made available for individuals in the House to see.

I am glad to say that after the film was shown to Senator EDWARD BROOKE that he filmed an introduction to the film which is now part of the document-

tary. He was convinced it was one of the finest television documentaries he had ever seen, and he was glad to be a part of it.

So I would urge the Members of the House to see the film, and if they cannot I will try to get the text so that they can get the benefit of this fine work.

Mr. Chairman, at this point I insert in the RECORD a number of reports on sickle cell anemia and Dr. Nalbandian's work, which have appeared in medical publications. The reports follow:

[From the Journal of the National Medical Association, January 1972]

SICKLE CELL ANEMIA—CONQUEST OF A MOLECULAR DISEASE

(By Robert M. Nalbandian, M.D., Associate Pathologist, Blodgett Memorial Hospital, Grand Rapids, Mich.; Adjunct Associate Professor of Physiology, School of Medicine, Wayne State University, Detroit, Mich.; Consultant to U.S. Army, Medical Research Laboratory, Fort Knox, Ky.)

Sickle cell anemia is a cruel, crippling, episodic disease. Although it lingers, it is lethal for its victims, 99% of whom are black. The epochal paper of Pauling and associates¹ formulated and supported by experimental evidence the penetrating concept that sickle cell anemia was caused by genetically controlled structural features of an abnormal hemoglobin molecule. According to Pauling this disease now has "a known molecular basis for pathogenesis, a molecular basis for diagnosis, and a molecular basis for treatment."² His statement is supported by a series of brilliant investigations since 1949 on hemoglobin at the molecular level. Murayama of the National Institutes of Health achieved a major, significant advance when, based upon his construction of a precision scale model of the hemoglobin molecule, he elucidated his hypothesis^{3,4} for the molecular mechanism of sickling, recently only slightly modified by him.⁵ Our inferences and deductions, made from the assumption that the modified Murayama hypothesis was correct, have produced an astonishing number of important discoveries, strengthening thereby the validity of his hypothesis very substantially. As a consequence, for the first time in medicine, we have a uniquely comprehensive view of a lethal disease extending as a continuous spectrum from the aberrant hemoglobin molecule to the clinical level of diagnosis and treatment in the afflicted patient.

These recent advances, all derived from the Murayama hypothesis, are discussed in detail elsewhere.^{2,5,6}

1. The Murayama test is the first specific test with a molecular basis for the detection of S hemoglobin.^{2,5,6}

2. A therapeutic molecular strategy directed at the sickling event was developed.^{2,5,7} This consisted of mounting a chemical attack on the implicated hydrophobic bonds between interacting tetramers of S hemoglobin.

3. In the search for a chemical desickling agent the specifications of molecular properties were first derived from molecular theory and preceded the selection of urea.^{2,5}

4. An automated dithionite test¹⁰ and a tube version,⁹ each with a molecular basis for the detection of hemoglobin S, have been developed, appropriate for mass screening of large human populations. The automated method processes 120 specimens per hour at a reagent cost of 2c each. These testing techniques have been shown to be entirely accurate in two extended field trials: 1) more than 23,000 soldiers examined at the U.S. Army Medical Research Laboratory at Fort Knox, Kentucky and 2) over 5000 black

school children and indicated blood relatives in Grand Rapids, Michigan.

5. Experimental work has led directly to the design of successful clinical protocols for the use of intravenous urea in the treatment of sickle cell crisis^{2,6} and the use of oral urea in the prophylactic treatment of sickle cell disease.^{2,7}

The therapeutic decision deduced from molecular information to use urea in the treatment of sickle cell disease moved Pauling to write: "Most methods of therapy have been empirical in origin. We might consider that medicine is now entering a new stage in which detailed molecular understanding of the nature of disease will be used effectively in the search for therapeutic methods." The protocols^{2,5-7} which we have published for the intravenous and oral modes of urea therapy in the treatment of sickle cell disease were evolved with great care over the past 2 years, drawing upon the collected experience of several clinicians at several medical centers. The treatment is safe and effective IF the protocols are faithfully followed in all particulars. Urea, even though produced in the liver and endogenous to the body, when used as a pharmaceutical agent may, like any other agent, be mis-handled with adverse consequences for the patient. Hence, faithful compliance with the provisions of the published protocols is essential if therapeutic failures and medical misadventures are to be avoided.

These investigations of the therapeutic use of urea for sickle cell disease and shown to be safe and effective are now in the final stage of evaluation, namely, controlled randomized studies. Substantial funding will be required to expedite the last phase of this research. Our clinical protocols are published^{2,5-7} for the attention of serious students of this disease so that evaluation of this chemotherapeutic modality may proceed at an accelerated pace by the use of identical, reliable protocols simultaneously at independent medical centers. Until such studies have been completed and reported, these protocols are not intended for general medical use. Pauling states² that the urea modality of treatment "offers a great promise for the future. The suffering of the sickle cell homozygotes can be and should be decreased by the use of methods of therapy" as described.

While the conquest of this disease is of vital concern to 500,000 American blacks and to millions of Africans and non-blacks elsewhere in the world there are even more profound aspects to this body of research. Lethal effects of a genetic disease have ostensibly been conquered by chemical methods deduced from a fund of specific, highly sophisticated molecular information. Our attention was directed toward the incorrect structure of the genetic product, S hemoglobin, rather than toward the incorrect code in the gene. By chemical manipulation of the hemoglobin S molecule with urea, the deadly property of sickling was inhibited without interference with the critically essential function of oxygen transport. Certainly, this is exquisitely delicate molecular remodeling. The methods culminating in the chemotherapeutic use of urea in sickle cell disease now become a model for the conquest of other genetic disease, well before the era of genetic engineering.

Investigators are invited to turn their attention to these recent innovative diagnostic and therapeutic advances in sickle cell anemia at the molecular level of reference. There are no final answers in medicine. Imminent discoveries beckon us all onward.

FOOTNOTES

¹ PAULING, L., H. A. ITANO, S. J. SINGER, and I. C. WELLS. Sickle Cell Anemia, A Molecular Disease. Science, 110:543, 1949.

² NALBANDIAN, R. M. (ed.), Molecular Aspects of Sickle Cell Hemoglobin: Clinical Applications, Chas. C. Thomas Co., Springfield, Ill. 1971.

³ Listing of U.S. Army Medical Research Laboratory Reports No. 893 through 898. New Eng. J. Med., 284:165, 1971.

⁴ MURAYAMA, M. Molecular Mechanism of Red Cell "Sickling." Science, 153:145, 1966.

⁵ MURAYAMA, M. Structure of Sickle Cell Hemoglobin and Molecular Mechanism of the Sickling Phenomenon. Clin. Chem., 14:578, 1967.

⁶ NALBANDIAN, R. M., G. SHULTZ, J. M. LUSHER, J. W. ANDERSON, and R. L. HENRY. Sickle Cell Crisis Terminated by Intravenous Urea in Sugar Solutions—a Preliminary Report. Am. J. Med. Sci., 261:309, 1971.

⁷ NALBANDIAN, R. M., J. W. ANDERSON, J. M. LUSHER, A. AGUSTSSON, and R. L. HENRY. Oral Urea and the Prophylactic Treatment of Sickle Cell Disease—a Preliminary Report. Am. J. Med. Sci., 261:325, 1971.

⁸ NICHOLS, B. M. and R. M. NALBANDIAN, R. L. HENRY, P. L. WOLFF and F. R. CAMP, JR. Murayama test for Hemoglobin S: Simplification in Technique. Clin. Chem., 17:1057, 1971.

⁹ NALBANDIAN, R. M., B. M. NICHOLS, F. R. CAMP, JR., J. M. LUSHER, N. F. CONTE and R. L. HENRY. Dithionite Tube Test—A Rapid, Inexpensive Technique for the Detection of Hemoglobin S and Non-S Sickling Hemoglobin. Clin. Chem. 17:1028, 1971.

¹⁰ NALBANDIAN, R. M., B. M. NICHOLS, F. R. CAMP, JR., J. M. LUSHER, N. F. CONTE and R. L. HENRY. Automated Dithionite Test for the Rapid, Inexpensive Detection of Hemoglobin S and Non-S Sickling Hemoglobopathies. Clin. Chem. 17:1033, 1971.

AN AUTOMATED MASS S.C.A.T. PROGRAM IN GRAND RAPIDS SCREENING PROGRAM FOR SICKLE CELL DISEASE

(By Robert M. Nalbandian, M.D.; Bruce M. Nichols; Albert E. Heustis, M.D.; Winston B. Prothro, M.D.; and Frederick E. Ludwig, M.D.)

The automated dithionite test, which identifies hemoglobin S at reagent cost of 2 cents each and at a rate of 120 specimens per hour, has been used successfully in both civilian and military mass screening programs for the detection of sickle cell disease. Black school children in Grand Rapids, Mich., were used as the initial test population for a trial of the technique in an ordinary community. Families of those students with positive tests were selected out of a total black population for additional testing. Several patient-controlled options were then offered to afflicted families, including choice of physician, clinics, treatment, and genetic counseling. Country-wide adoption of this automated method should lead to the accumulation of accurate statistics for the first time on incidence, morbidity, mortality, gene frequency, and susceptibility to other diseases of sickle-cell afflicted individuals.

A comprehensive mass screening program for sickle cell disease which includes diagnosis, treatment, and genetic counseling has been successfully accomplished with the black population of Grand Rapids, Mich. The automated screening technique processes specimens at the rate of 120/hr per unit at a reagent cost of 2 cents each and requires only 0.5 ml of anticoagulated whole blood.

While there are numerous screening programs for the detection of sickle cell disease in operation at various medical centers in the United States, these programs are limited in scope, reaching only a small number of the black population at risk. Furthermore, tests in current use do not have a known molecular basis for specificity and none are automated.

TECHNIQUES

All specimens were collected in 5-ml vacuum test tubes with edetic acid (EDTA) as the anticoagulant.

All blood specimens collected in the initial mass screening are processed by the auto-

mated dithionite test.¹ Periodic updating of the population at risk is to be conducted twice a year. Such updating may be done conveniently by either the automated dithionite test or the dithionite tube test² at no difference in cost. The reagents of the dithionite tests (four types have been developed) essentially consist of (1) potassium phosphate, (2) sodium dithionite, and (3) saponin. When hemoglobin S, either homozygous or heterozygous, red blood cells are exposed to such reagents, the cells lyse, the hemoglobin deoxygenates, and a nematic liquid crystal forms which interferes with the transmittance of light. Loss in transmittance does not occur with hemoglobin A in such systems. Diagnostically significant curves are obtained by automated techniques with the use of a sequential multiple analyzer. Details of principle, techniques, and documentation of the validity and reliability of the test have been published elsewhere recently.^{1,2} False-negative results may be obtained if the sodium dithionite or the saponin is not potent or if there is very severe anemia. False-positive tests may be obtained with hemoglobin Bart's and perhaps some other non-S sickling hemoglobins. Therefore, since the automated dithionite test is a mass screening technique, hemoglobin electrophoresis of all positive dithionite specimens will not only yield accurate diagnoses for hemoglobin S, but also will lead to the identification of other hemoglobinopathies, now often overlooked or misdiagnosed.

Hemoglobin electrophoresis at pH 8.4 was done by the equipment and method of the Helena Laboratories, Beaumont, Tex.

All collection of blood specimens was done in several Grand Rapids schools by teams of "bleeders" consisting of a clerk and a paid, professionally skilled person who did the actual venipuncture. The latter included medical technologists, registered nurses, medical students, and physicians. At all bleeding stations, either a doctor of medicine or a registered nurse supervised the overall operation. A simple code for identifying individuals and schools was developed and used. All collected specimens of blood were refrigerated but not frozen on the day of collection and were processed in an interval from a few hours up to ten days after collection.

Each positive tested individual was given at the genetic counseling session a wallet card identifying the hemoglobinopathy as suggested by Moran.³ Instructions were given that the card was to be shown whenever medical attention or hospitalization is sought.

In our study (Table 1) 309 cases of sickle cell hemoglobin were found among 5,192 individuals tested. The total cost per test (Table 2) was 82 cents each. The total cost per positive test was \$13.69 each. Using our methods and techniques, LTC Frank R. Camp, Jr., and COL Nicholas F. Conte of the US Army Medical Research Laboratory, Fort Knox, Ky., have successfully screened to date more than 23,000 troops and have found over 165 cases of sickle cell hemoglobin at a cost per test of 0.17 cents and a cost per positive test of \$19.03 each (unpublished data). Dr. Leo P. Cawley (oral communication, March 1971) and Dr. Edwin L. Bemis and associates (oral communication, Sept. 1971) have insti-

tuted current community-wide mass screening programs in their respective cities by the use of our techniques. Commander Lawrence G. Dickson of the US Naval Medical Research Institute, Bethesda, Md. (oral communication, July 1970), has coupled our automated dithionite test with an automated technique for the detection of glucose-6-phosphate dehydrogenase deficiency. The results of mass screening of naval recruits for these factors may ultimately be used as a basis for determining geographical zones of assignment for military duty.

TABLE 1.—SUMMARIZED DATA ON POPULATION BASE AND RESULTS OF MASS SCREENING PROGRAM

	Number of students			Total
	White	Black	Not specified ¹	
Grand Rapids school system	27,041	7,917	675	5,192
Screening tests performed	52	4,465		
Hemoglobinopathy diagnosed:				
AS	1	264	41	306
SC		1	1	2
SS		1		1

¹ The race of 675 students was not specified because of clerical omission.

TABLE 2.—Summary of expenses involved in screening program—5,192 tests

	Cost
Reagents	\$259.05
Supplies (vacuum test tubes, needles, etc)	1,233.71
Electrophoresis (supplies, reagents)	24.10
Wages:	
Professional	1,693.09
Nonprofessional	1,019.80
Total	4,229.75
Cost per test	0.82
Cost per positive test	13.69

COMMENT

Comprehensive Mass Screening Program.—Any mass screening program for the detection of hemoglobin S must be designed so that the lowest possible cost per positive test will be achieved. Otherwise the cost of mass screening of the total US black population would come to a prohibitive sum.

In metropolitan areas comprehensive mass screening can be achieved economically in two phases. The first is an initial mass screening by automated technique of black school children at selected schools. Second, the blood relatives of children showing positive tests are tested. In these families, individuals with positive tests are then further tested by hemoglobin electrophoresis to determine hemoglobin genotypes, information which is highly pertinent to genetic counseling. Such an approach eliminates the needless screening of large numbers of sickle-cell-negative individuals and keeps the cost of the screening program low. The screening program requires a semiannual updating of the population by screening tests. All black school children entering at the kindergarten level or transferring into the school system at any grade level are tested. Again, the families of positive-testing students are also tested.

We believe that voluntary, well-publicized educational programs antedating by several weeks the initial and subsequent mass screenings are essential to the success of this type of project.

Patient-Controlled Options.—All individuals or families detected during the program to be afflicted with sickle cell disease were offered a set of options: (1) They were free to do nothing more. (2) They could seek the advice of a physician of their choice. (3) They could seek the advice of a physician

knowledgeable in the indications and administration of urea therapy. (4) They could visit the sickle cell anemia clinic and obtain urea treatment from designated physicians at the Blodgett Memorial Hospital. (Urea therapy, which is still under investigation and evaluation⁴⁻⁶ was used as part of an ongoing research program in the absence of other known effective treatment for sickle known effective treatment for sickle cell disease.) (5) Finally, they were given the opportunity to obtain family-wide genetic counseling from black geneticists from Michigan State University. (The genetic counseling aspect of this program is under the guidance of Prof. Herman Slatis and will be reported subsequently by him and his colleagues elsewhere.)

FUTURE COMPREHENSIVE SCREENING PROGRAMS

On the basis of our experience with this mass screening program we wish to emphasize certain points.

1. For maximum effectiveness, screening programs should be presented to the entire community by black leaders including physicians, dentists, nurses, and religious leaders. Essential to the success of the program is a preceding educational campaign making use of the news media—radio, television, newspapers, and magazines. In addition, parent-teacher associations and health-oriented groups are most useful, and educational projects on sickle cell disease at all grade levels in the school system if undertaken well in advance of the actual screening will be effective in mobilizing students to participate. In those schools where such programs were well carried out almost 99% of the student body gave blood specimens.

2. The mass screening of a segment of the population of a large metropolitan area is a complex undertaking. The logistics must be closely coordinated among the personnel of the local school system, the health department, the physician's organizations, the local hospital laboratories, medical technologists, and registered nurses.

3. The opportunity for human error is markedly reduced if the actual bleeding team consists of professional personnel, while a registered nurse or a physician should also be in attendance when blood specimens are being collected.

4. In order to avoid possible medicolegal entanglements, the program must be free and voluntary. Permission slips signed by the parents authorizing the collection of the blood specimen and the performance of the test should always be obtained.

5. In our study we noted some reluctance by high school students to submit to testing. A particular effort should always be made to involve this particular age group since afflicted individuals of reproductive age will benefit most from genetic counseling.

6. Careful record compilation and coding is essential if each community is to continue to benefit from such a program.

Comprehensive mass screening programs (diagnosis, treatment, genetic counseling) for sickle cell disease can now be mounted in any interested community, since an automated, inexpensive testing technique is now available. Such a model study has been successfully accomplished in Grand Rapids, Mich. As a consequence, there are now a small number of successful, ongoing civilian

¹ Nalbandian RM, Nichols BM, Camp FR Jr, et al: Automated dithionite test for the rapid inexpensive detection of hemoglobin S and non-S sickling hemoglobinopathies. *Clin Chem* 17:1033-1037, 1971.

² Nalbandian RM, Nichols BM, Camp FR Jr, et al: Dithionite tube test: A rapid, inexpensive technique for the detection of hemoglobin S and non-S sickling hemoglobin. *Clin Chem* 17:1028-1032, 1971.

³ Moran, T. J.: Detection of hemoglobin S in a community hospital. *JAMA*, to be published.

⁴ Nalbandian RM (ed): *Molecular Aspects of Sickle Cell Hemoglobin: Clinical Applications*. Springfield, Ill. Charles C. Thomas Publisher, 1971.

⁵ Nalbandian RM, Shultz S, Lusher JM, et al: Sickle cell crisis terminated by intravenous urea in sugar solutions: A preliminary report. *Amer. J. Med. Sci.* 261:309-324, 1971.

⁶ Nalbandian RM, Anderson JW, Lusher JM, et al: Oral urea and the prophylactic treatment of sickle cell disease: A preliminary report. *Amer. J. Med. Sci.* 261:325-334, 1971.

and military mass screening programs for the detection of sickle cell disease by techniques and methods described and cited in this paper.

ABSTRACT No. 51—MASS SCREENING FOR HEMOGLOBIN S IN LARGE CIVILIAN AND MILITARY POPULATIONS BY THE AUTOMATED DITHIONITE TESTS

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Four new dithionite tests have recently been developed for the detection of hemoglobin S. One of these, the automated dithionite test, has been used in large mass screening programs in metropolitan and military populations constituting in aggregate a field-test of over 27,000 individuals. The automated technique processes 120 specimens per hour on a $\frac{1}{2}$ cc of anticoagulated whole blood at a reagent cost of 2¢ each. In Grand Rapids a comprehensive mass screening program was undertaken successfully. The initial test population were the black school children. Positive testing children identified the affected families in the community. Members of such families were then also tested. Several patient-controlled options were offered including choice of physician, clinic treatment, and genetic counseling. By this selective approach to the black population at risk in large metropolitan communities the needless effort and expense of screening sickle cell negative individuals is avoided, resulting in a low total cost per test (83¢ each) and a low total cost per positive test (\$13.85 each) when all administrative costs are included. Detailed data of the Grand Rapids survey and the more than 20,000 troops studied at the U.S. Army Medical Research Laboratory will be presented. The automated dithionite test is an efficient reliable technique suitable for the mass screening of large human populations for the detection of sickle cell hemoglobin. An ancillary gain in the universal utilization of this automated, objective, reproducible technique will be the accumulation of accurate statistics for the first time on incidence, morbidity, mortality, gene frequency, and susceptibility to other disease of sickle cell victims.

ABSTRACT—A COLLECTED BIBLIOGRAPHY OF CLINICAL ADVANCES IN SICKLE CELL DISEASE BASED ON THE MURAYAMA MOLECULAR HYPOTHESIS

OBJECTIVE

To collect and make conveniently available in one source a bibliography of all scientific communications dealing with diagnostic and therapeutic advances in sickle cell disease derived from the Murayama hypothesis for the molecular events involved in the sickling of a hemoglobin S red cell.

METHOD

The published papers, abstracts, presentations at national and international scientific meetings, a book, a scientific exhibit, a television documentary, and other scientific communications are collected and arranged in the order of publication or presentation. Listed in this bibliography are 74 such items. The cited research work emanates principally from three institutions: Department of Pathology, Blodgett Memorial Hospital, Grand Rapids, Michigan; Department of Physiology, School of Medicine, Wayne State University, Detroit, Michigan; and the US Army Medical Research Laboratory, Fort Knox, Kentucky.

CONCLUSIONS

The Murayama hypothesis for the molecular events involved in the interior of a sickling hemoglobin red cell is based in part on his

construction of a precision scale model of the hemoglobin S molecule. Murayama, drawing in part upon the molecular investigations of others, such as Pauling, Braunitzer, Konigsberg, Muirhead, Perutz, and Ingram, has in effect provided us with a molecular definition of disease and a description of molecular interaction which has pathogenetic significance in sickle cell disease. This is the first time any disease has been understood in such terms at the molecular level in medicine. The cited references in this bibliography are all directly derived from the Murayama hypothesis either by deduction or inference. These scientific communications represent advances at the clinical level. Our group has bridged the growing gap between advancing sophisticated basic science work and an effective transliteration of such information into clinical gains in sickle cell disease. All of the following discoveries are such extensions of the Murayama hypothesis:

1. Five inexpensive, new tests for hemoglobin S, each with a molecular basis: (a) Murayama test; (b) four dithionite tests.
2. Several successful mass screening studies for sickle cell hemoglobin in large military and civilian populations by the automated dithionite test.
3. A therapeutic molecular strategy for mounting a chemical attack on the intertetrameric hydrophobic bonds essential to the sickling event.
4. The theoretical specifications defining an effective desickling agent including some particulars of molecular structure which antedated and led to the selection of urea.
5. Optical and electron microscopy evidence for the desickling effect of urea.
6. The evolution of a safe and effective clinical protocol for the intravenous use of urea in sugar solutions in the treatment of acute sickle cell crisis without the effect of narcotics or analgesics.
7. The evolution of a simple clinical protocol for the oral, prophylactic treatment of sickle cell disease and related clinical conditions.

Each and every time a prediction was made from the Murayama hypothesis experimental results confirming the deduction or inference were consistently forthcoming. Without too much exaggeration, one may view the Murayama hypothesis as a scientific cornucopia of innovative clinical advances in sickle cell disease.

It is for the convenience of the serious student of sickle cell disease who may wish to advance the clinical knowledge of sickle cell disease by the molecular route of the Murayama hypothesis that we have compiled this pertinent bibliography.

The citations in this publication span only two years—from November 1969. The scientific content of these citations only begins to suggest the truth, power, and beauty of the Murayama hypothesis. It is our hope that other workers will pick up this powerful tool which Murayama has given us and will advance the clinical gains in diagnosis and treatment of sickle cell disease, a deadly if lingering affliction which numbers its worldwide victims in the untold millions.

A COLLECTED BIBLIOGRAPHY OF CLINICAL ADVANCES IN SICKLE CELL DISEASE BASED ON THE MURAYAMA MOLECULAR HYPOTHESIS

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Mammen, E. F., G. F. Anderson, and M. I. Barnhart (eds). Sickle cell anemia. President at 20th Annual Symposium on Blood. Department of Physiology, School of Medicine, Wayne State University, Detroit, Michigan, January 20-21, 1971. Supplement to *Thrombosis Diathesis et Haemorrhagica* (scheduled for 1972).

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to my distinguished colleague, the gentleman from Ohio (Mr. MILLER).

Mr. MILLER of Ohio. Mr. Chairman, I wish to express my full and complete support for H.R. 13592, the National Sickle Cell Anemia Prevention Act, and the national commitment it makes to find a way to diagnose and cure this inherited blood disease which primarily afflicts black people.

The Federal Government can no longer stand in the background and ignore the urgent need to put its muscle behind a concerted effort to study and control this tragic affliction. Most who have the disease will not live to age 20 after having suffered an incredibly agonizing life. Interest and research in the disease have been growing rapidly but much remains to be done. Federal resources can make the important difference between an early cure and a lifetime of suffering. That is why this legislation is a giant step in that direction.

Mr. SCHEUER. Mr. Chairman, I rise in support of this legislation to establish a national program for diagnosis, prevention, and treatment of sickle cell anemia, a blood disease which strikes only black Americans. This genetic dis-

ease, carried by one out of every 12 blacks, afflicts one out of every 500 black babies born in this country. It is a painful, deadly malady which has received far too little attention until very recently.

This legislation provides for a voluntary screening and counseling program and programs to develop and distribute educational materials relating to sickle cell anemia. The bill authorizes an initial \$25 million for fiscal year 1973, increasing to \$45 million by fiscal year 1975. These sums will greatly help reduce the incidence of this disease and bring new resources to bear on the problems of diagnosis and cure. I am confident that this bill will receive the overwhelming, favorable endorsement of the House today.

Mr. BADILLO. Mr. Chairman, I rise to offer my enthusiastic support for this legislation and to again emphasize for the RECORD that it is being enacted over the objections of the administration—just another example of how distorted and misdirected the Nixon administration's priorities really are.

It seems incredible that we have failed for this long to establish a national commitment to deal with the dread disease of sickle cell anemia. We know that more than 2 million Americans carry the so-called sickle cell trait; that the disease is incredibly painful, killing over half its victims before the age of 20 and crippling most before death.

We know, too, that sickle cell anemia is genetic in origin and that one out of every 12 black persons is a carrier.

When we compare the incidence of sickle cell anemia at birth with other diseases occurring among all races, the implications become obvious: in the United States, one out of every five black infants is born with sickle cell anemia while one out of every 2,500 of all races is born with diabetes, one out of every 2,880 with leukemia and one out of every 5,000 with muscular dystrophy.

In April 1969, the Harlem Hospital in New York sponsored a community health fair and tested a random sample of black people from the community for sickle cell anemia. Of 47 tested, seven showed the sickle cell trait—almost 15 percent.

The bill before us today is a start, but an important one. It will establish a national program for diagnosis, prevention, and treatment, a voluntary screening and counseling program, and new programs to develop and distribute educational materials relating to this dread disease. An important feature of the bill provides for community representation in the development and operation of programs.

I regret that the House bill is not as broad in scope or as generous in funding as is the Senate version and I particularly regret the failure of the House bill to bring the Veterans' Administration and the Department of Defense into the screening programs.

On balance, however, the bill deserves the support of every Member of this House and immediate implementation by the Department of Health, Education, and Welfare.

Mr. CONYERS. Mr. Chairman, after many silent years, the public and the

Congress have finally recognized the need for public funds to fight the painful and tragic disease of sickle cell anemia which afflicts so many black Americans.

Only as recently as February 1972, President Nixon declared sickle cell anemia an area of administration concern. Now that the Senate has taken swift and generous action to give substance to administrative concern by unanimously passing the National Sickle Cell Anemia Act, the House must meet its responsibility.

The bill reported out by the House Interstate and Foreign Commerce Committee is a good one. It is not, however, as generous as its Senate counterpart. Whereas S. 2676 authorizes \$142 million to fight sickle cell, the House version authorizes only \$105 million. I would hope that we would raise the level of House funding to meet Senate levels. Adequate funding is essential if the fight against sickle cell is to be successful.

Furthermore, I should like to see included in the House version, those sections of the Senate bill which would provide protection of Armed Forces personnel and of veterans through the Department of Defense and the Veterans' Administration.

It is commendable that the Senate was able to pass such worthy legislation and that the House committee acted so quickly. It is reassuring that at long last the Congress considers sickle cell anemia not only a national problem, but one demanding national effort and priority.

Mr. STOKES. Mr. Chairman, today we meet to vote on a bill of utmost importance to black Americans, the National Sickle Cell Anemia Act. I would like to demonstrate how and why sickle cell anemia is so widely feared in the black community, and why this legislation is badly needed.

The statistics speak with a loud and disarming voice; 50,000 Americans are afflicted with sickle cell anemia and they lead intolerably painful existences as a result, rarely living past the age of 30. Two million other black Americans carry the sickle cell trait, and run the risk of transmitting the disease to their children.

Until now, little Federal money has been spent in the fight against this dreaded disease. Today, however, we vote on a bill which will change that situation. H.R. 13592 would provide \$25 million for fiscal year 1973, \$35 million for fiscal year 1974, and \$45 million for fiscal year 1975. With these funds, voluntary screening and counseling programs would be instituted, along with programs to distribute educational materials to black communities. Persons nearing child-rearing age would be given first priority, followed by children under the age of 7.

We have learned two important lessons from our efforts to fund programs designed to combat sickle cell anemia. First, we have discovered that, if black people had not banded together to fight the political and medical establishment, the disease would still be ignored or unknown today. Second, we must realize that the battle against sickle cell anemia

is only part of the larger war against insufficient and inadequate health care in urban and rural communities throughout the land.

If this bill is passed by the House today, as I am confident it will be, we cannot afford to rest on our laurels. Instead, we must follow this bill through its implementation, and then move on toward a national system of health care which will insure that we never again make the mistake of neglecting a major disease.

Mr. WILLIAM D. FORD. Mr. Chairman, I want to join with my colleagues today in urging prompt passage of H.R. 13592, the National Sickle Cell Anemia Prevention Act.

This bill would establish programs for the diagnosis, prevention, and treatment of one of the most neglected health problems in the United States. It is estimated that between 50,000 to 80,000 Americans are afflicted with this disease. Approximately one in 500 black children will suffer from sickle cell anemia and its effects are particularly tragic. The average victim of the disease, under age 6, may require up to 10 visits to the hospital each year. After age 10, this child may expect to spend a minimum of 4 weeks of every year in the hospital, with each hospital visit costing almost \$1,000. One-half of the victims die before they reach the age of 5, and 80 percent die before age 30. Despite these shocking statistics, the disease is still incurable and treatment methods are grossly inadequate.

In his health message to Congress on February 18, 1971, President Nixon stated that one "disease target for concentrated research should be sickle cell anemia." The President went on to say that:

It is a sad and shameful fact that the causes of this disease have been largely neglected throughout our history. We cannot rewrite this record of neglect, but we can reverse it.

I completely share the President's views as expressed in this statement, and Congress, by the introduction of this legislation is obviously prepared to set forth a national commitment to combat this disease. But in spite of the administration's inspiring rhetoric, administration spokesmen opposed this bill during its consideration by the House Interstate and Foreign Commerce Committee.

Mr. Chairman, there have been many occasions during the Nixon administration when Congress has been called upon to take the leadership in areas where the administration's verbal promises have not been followed through with action. The administration's position on this bill, however, presents a shocking example of its continual lack of concern for the urgent problems afflicting black Americans in this country.

I strongly urge passage of this bill as a first step toward demonstrating Congress' desire to put forth a national commitment to eradicate this dread disease.

Mr. ANDERSON of California. Mr. Chairman, as an author of a bill which would establish a national sickle cell anemia program, I rise in support of H.R. 13592.

This measure would establish a national program for diagnosis, prevention, and treatment of sickle cell anemia—a

disease that kills half of its victims before their 20th year, and most of the rest by age 40.

This painful and deadly blood disease is inherited when both parents carry the sickle cell trait. Approximately 2,500,000 black Americans carry this trait and pass it along to their offspring. Approximately one black child out of every 500 born in the United States inherits this often fatal disease.

The bill before us today, H.R. 13592, would attack sickle cell anemia on two fronts: First, to determine who has the trait and the disease, and to counsel those who are afflicted, the bill provides \$75 million over the next 3 years for the establishment and the operation of voluntary sickle cell anemia screening and counseling programs in the communities. In addition, information and educational material will be developed relating to sickle cell anemia and it will be distributed to doctors and clinics, and also to the general public.

Second, to develop methods of diagnosing, treating, and preventing sickle cell anemia, the bill authorizes \$30 million over the next 3 fiscal years.

Currently, a variety of tests are available for the detection and the diagnosis of sickle cell disease. Several recently developed screening tests can be administered at less than 50 cents per sample.

Our efforts to detect the cause of sickle cell anemia have been quite successful. However, there is a great need to improve methods of treating those who have the anemia. Most physicians in treating sickle cell patients have used blood transfusions, surgery, and intravenous therapy to combat the disease. Unfortunately, these methods of therapy do not appear to provide complete relief or to remedy the cause of the disease. In some cases, the treatments have serious side effects. The bill before us today should result in the development of improved methods to treat and control the deadly disease.

I am pleased that grants and contracts will be made to organizations on the local level, since many community minded individuals and organizations in the area of Los Angeles that I represent, have been in the forefront of the fight to prevent sickle cell anemia.

As the Senate has already adopted similar legislation, I am hopeful that this measure will be rapidly approved in conference, and signed into law in the coming weeks.

Mr. ADDABBO. Mr. Chairman, I rise in support of the national sickle cell anemia bill, H.R. 13592, adopted unanimously by the House committee. I shall also support the amendment proposed by my good friend and colleague, Mr. GAIAMO, to bring Cooley's anemia under the bill. I do not feel that the inclusion of this amendment will in any way dilute the sickle cell anemia programs.

Sickle cell anemia is a vicious blood disease that is peculiar to black people. It is estimated that as many as 50,000 people suffer from this disease and few live beyond the age of 20. Many die much earlier after much suffering involving long periods of hospitalization.

The bill would establish a national

program for diagnosis, prevention, and treatment of sickle cell anemia. It would also establish a voluntary screening and counseling program and programs to develop and distribute educational materials relating to this disease. Participation in the program would be strictly voluntary and all information discreetly handled.

This crash program is warranted in order that we make a commitment in the fight to control this vicious disease. Until now almost no Federal resources have gone into the study and control of the disease. Within my own district, there are many concerned citizens and organizations, who at their own expense and time, are working on this serious problem.

The Gaiamo amendment, to bring Cooley's anemia under the bill, is a step in the right direction. This particular blood disease affects children of Italian and Greek background and study and control of this particular disease should also be included under these programs.

I fully support the sickle cell anemia bill and the Gaiamo amendment, to include Cooley's anemia.

Mr. ROSTENKOWSKI. Mr. Chairman, sickle cell anemia is a malicious bigoted disease of the blood that affects one out of every 500 black people in the United States. It is a cruel, painful, and costly disease that has no cure, no prevention, and, until now, a disease that has been disgracefully neglected by the Congress and the medical society. An attempt to find a cause and a cure for sickle cell anemia is long overdue.

Today, Mr. Chairman, the House will consider the National Sickle Cell Anemia Act. This act will provide a national diagnosis, prevention, and treatment program for sickle cell anemia. It will also establish a voluntary screening and counseling program as well as programs to develop and distribute educational materials relating to sickle cell. As a primary sponsor in the House of the Sickle Cell Anemia Act, I cannot urge my colleagues strongly enough to support the quick passage of this act.

Sickle cell anemia kills most of its victims before they reach 20 years of age. It is clear that a widespread screening for the disease could provide black families with information concerning the probability of this genetic disease affecting their children, and thus, considerably limit its occurrence. This screening program and the research programs combined with extensive counseling and educational programs are a major step forward in establishing a national commitment in dealing with sickle cell anemia. Again, I urge unanimous support in the House for the Sickle Cell Anemia Prevention Act.

Mr. HILLIS. Mr. Chairman, I take the floor today to support legislation which is important to a great segment of our society.

It is unfortunate that in years past there has been no great concentrated effort to combat sickle cell anemia.

It is unfortunate that this dreaded disease has been allowed to thrive not only in the United States but throughout the world.

This amendment will set up a national program for the prevention and treatment of this disease.

We must remember that some 80,000 people throughout the world die annually of sickle cell anemia.

We must remember that those who have inherited this disease rarely live past the age of 20 years old.

We must remember that out of 25 million black Americans, 2.5 million are born with traces of sickle cell anemia and 50,000 of these Americans receive the full dose of this disease.

It is also important to remember that this disease is not only fatal, but extremely painful. A person who has sickle cell anemia can expect six to seven critical painful attacks each year.

I, and the great majority of Americans, for the past generations have supported campaigns to combat cancer, TB, heart disease and many other killers of mankind.

It appears as if sickle cell anemia has long been without a chief opponent.

With this amendment, this will end. I say, let us make a beginning. Let today be the beginning of our war against sickle cell anemia.

Mr. RODINO. Mr. Chairman, I am pleased to support the amendment that will be offered by our distinguished colleague (Mr. GIAMMO) to provide an additional \$7.1 million for research, screening, treatment, and training programs for Cooley's anemia. I want, at the outset, to pay tribute to our colleague's fine work in bringing to our attention this widespread disease, which is incurable and usually fatal, and which was little known until he initiated his effort to combat it.

I strongly support H.R. 13592, the National Sickle Cell Anemia Act. There is an urgent need to act effectively to provide help for the many citizens, primarily black people, who are afflicted with this agonizing disease or who carry the genes to transmit it to their children.

Since Cooley's anemia is similar to sickle cell anemia, it would be most appropriate to expand the bill before us to provide additional authorization for programs to attack Cooley's anemia. Initially Cooley's anemia, medically termed *thalassemia major*, was peculiar only to persons of Mediterranean descent—Italians and Greeks primarily. However, with generations of intermarriage it is now found among Americans of many other racial strains. By including Cooley's anemia programs under H.R. 13592 we would be establishing one act to cover both these genetic blood disorders.

The nature of our country's population interchange means, undoubtedly, that the range of this disease will increase. It seems imperative to me that we begin now to provide needed help, instead of waiting until the magnitude of the problem is such that we will have to undertake a vast crash program when it reaches epidemic proportions.

Mr. GREEN of Pennsylvania. Mr. Chairman, I am happy to rise in favor of this most important legislation for the prevention of sickle cell anemia.

The tragedy of sickle cell anemia is the tragedy of problems afflicting blacks

in that they go virtually unrecognized, unattended, and unsolved.

Perhaps because sickle cell anemia is a disease which afflicts blacks exclusively, its urgency has gone virtually unnoticed.

This has been manifested by the meager amounts spent on sickle cell research and by the absence of reliable treatment for the thousands of blacks suffering from the disease. Even where there are projects working for a solution to this problem, the lack of funds has been devastating.

Funds are sorely needed for research, counseling, public education, and volunteer screening, in both civilian and Government sectors. Also, it is absolutely necessary that centers for research and training in sickle cell anemia be developed. The legislation before us would provide for these important steps.

We must now pass this legislation. We can no longer ignore this disease which afflicts more than 100,000 black people across the country and the children of over 20,000 blacks in the city of Philadelphia.

Mrs. HICKS of Massachusetts. Mr. Chairman, I rise in support of H.R. 13592, the National Sickle Cell Anemia Control Act. This bill will provide Federal assistance for a disease that has crippled nearly 2 million Americans. H.R. 13592 provides approximately \$100 million for programs to combat sickle cell anemia. It is time we gave this disease a top priority for in order to prevent or ameliorate its damaging symptoms support of relevant research grants are necessary. I commend the chairman and members of the House Interstate and Foreign Commerce Committee for favorably reporting this bill.

My district which is the Ninth Congressional District in Massachusetts lies within the city of Boston.

According to the U.S. Census 1970, as reported by the Research Bureau Boston Redevelopment Authority: In Boston, 104,483 of the 641,000 citizens are of black ancestry; this equals approximately 16.3 percent. The census of 1970 almost certainly underestimated the actual population of black citizens and there has been a definite increase in the number of blacks in Boston during the last year or so. It would be realistic to state that the population of blacks in Boston currently numbers between 110,000 and 120,000 which is approximately 20 percent of the population and live in the South End, North Dorchester, and Roxbury areas. A number of surveys have been conducted in the last 35 to 40 years as to the prevalence of sickle cell trait. The several surveys conducted of urban population give a prevalence level as stated of sickle cell trait of 8.5 percent which means that Boston contains in its population approximately 9,000 individuals with sickle cell trait. Accordingly, the prevalence in Boston of sickle cell anemia must be about 180 individuals.

Today I would like to confirm my continuing support for a significant increase in Federal funds for an attack on sickle cell anemia. I introduced in May of last year, H.R. 8423 in the belief that it was time to establish a priority effort to gain control of and eliminate this terrible disease of black America.

Sickle cell anemia was first identified more than 60 years ago. Research on a cure for this disease was initiated shortly thereafter but the first major breakthrough in demonstrating the molecular basis for the disease did not occur until 1949 when Dr. Linus Pauling, a well-known biochemist and Nobel prize winner, showed that the characteristic sickling of the red blood cell was due to an abnormal hemoglobin molecule. Just recently, and using Dr. Pauling's work as a basis for the investigation, a small step has been taken toward the evaluation of a new chemical treatment for patients in the acute stages of the disease. We need to exploit this progress which has been achieved if we are to avoid another half century of awaiting a cure.

This disease is unusual in its occurrence. Sickle cell anemia is limited primarily to black citizens of our country who have inherited the trait for the disease from each of their parents. The evidence suggests that the disease became established in the Negro population as a result of some poorly understood evolutionary processes associated with a resistance to malaria. In Africa, where this disease had its origin the biochemical protective mechanism afforded blacks with the sickling trait a greater degree of resistance against the lethal effects of malaria than blacks without the trait. As a result this mutation of the hemoglobin molecule has survived.

Individuals who inherit the trait for the disease from each of their parents suffer terribly from the disease. The manifestations of the disease in small children is particularly pitiful to see and patients with the disease seldom live beyond the age of 40. One difficulty in combating the disease has been that the disease requires special testing for identification and diagnosis and this testing has not been really available.

Federal support for investigation of sickle cell anemia is scattered throughout several institutes of the National Institutes of Health, including the National Institute of Arthritis and Metabolic Diseases; the National Heart and Lung Institute; and the National Institute of General Medical Sciences; and the Health Services and Mental Health Administration. Although coordination of effort has been assigned to the National Heart and Lung Institute, the history of research on this disease indicates that it has never received any priority of attention.

In 1971, President Nixon announced that Federal funds to combat sickle cell disease would be increased to \$6 million. While this level of funding represents almost a fourfold increase in effort, it is not nearly enough to take immediate advantage of the knowledge which is already available and to extend this knowledge to the black population. Clearly what is needed is some means of improving the lot of individuals affected with sickle cell anemia, hopefully by so modifying this aberration of hemoglobin that it does not cause symptoms, or at worse, causes very minor symptoms. This means research. As I have indicated, there have been a few promising signs for the treatment of the disease. Genetic counseling services and screening to

identify the presence of the disease could be provided. These services should be provided to their fullest extent. Genetic blood disorders have been neglected for too long. Research, training, screening, prevention, and treatment programs will be established and coordinated effectively with passage of this legislation.

Mr. BYRNE of Pennsylvania. Mr. Chairman, I rise to express my wholehearted support for H.R. 13592, the National Sickle Cell Anemia Control Act.

Mr. Chairman, the terrible disease of sickle cell anemia most commonly strike black children, afflicting them with a life of pain. Most of its victims are unable to live beyond the middle thirties. Despite the prevalence of the disease and its unbearable consequences, little research has been conducted into methods of treatment and possible cures. Recently, however, scientific findings have indicated that there is a very real chance to do something about sickle cell anemia, if a concentrated effort is made.

Mr. Chairman, what is required is a national commitment against sickle cell anemia. This commitment must take the form of a substantially stepped-up research program within the National Institutes of Health to combat this dreaded disease which hopefully will lead to its eventual elimination.

Mr. Chairman, this bill provides the tools for this national commitment. I urge its immediate adoption.

Mr. RYAN. Mr. Chairman, it is essential to establish an effective national program for diagnosis, prevention and treatment of sickle cell anemia, an inherited blood disease which afflicts an estimated 50,000 black Americans. Another 2.5 million may be carriers of the trait. The purpose of H.R. 13592 is to establish such a program.

This bill would also establish a voluntary screening and counseling program and programs to develop and distribute educational materials relating to sickle cell anemia. Participation in any program would be wholly voluntary, with a guarantee of confidentiality of information obtained in the screening, counseling, and treatment process.

The National Sickle Cell Anemia Prevention Act also authorizes the Secretary of Health, Education and Welfare to make grants and contracts for projects for, first, research in the diagnosis, treatment, and prevention of sickle cell anemia, and second, the development of programs for diagnosis, treatment and prevention of sickle cell anemia.

The bill authorizes \$25 million for fiscal year 1973, \$35 million for fiscal year 1974, and \$45 million for fiscal year 1975.

The bill also provides for community participation in the development and operation of programs, and gives priority screening and counseling first to persons entering childbearing years and second to children under 7. Priority for contracts and grants is to be given areas which HEW determines to have the greatest number of persons in need of the programs.

Sickle cell anemia is caused when an individual inherits two genes—one from

each parent—which have the property of causing sickle cell anemia. The particular characteristic of sickle cell anemia is the occurrence of an abnormal hemoglobin molecule in the red blood cells, which causes the normally doughnut-shaped red blood cells to become crescent or sickle-shaped. Once the cells have assumed this shape, it becomes difficult for them to pass through the capillaries. Thus they accumulate in these vessels and block the flow of blood to surrounding tissues. The usual symptoms that result are stunted growth, pain, swelling of the joints, hemorrhage, tissue death, and consequent failure of vital organs such as the heart, spleen, and kidneys. Blindness, stroke and ulcers of the leg also occur. As a result, most sickle cell anemia victims fail to live beyond the age of 20.

This disease is believed to have developed in Africa centuries ago, because the single sickle cell gene is effective in combatting certain types of malaria.

Although the original bill sponsored by the distinguished gentleman from the District of Columbia (Mr. FAUNTROY) and the Senate passed bill are more far-reaching than this bill, nonetheless this bill is a major step forward in dealing with sickle cell anemia. I urge that it be passed by this House.

Mr. SPRINGER. Mr. Chairman, I have no further requests for time.

Mr. STAGGERS. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Sickle Cell Anemia Prevention Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds and declares—

(1) that sickle cell anemia is a debilitating heritable disease that afflicts approximately two million American citizens and has been largely neglected;

(2) that the disease is a deadly and tragic burden which is likely to strike one-fourth of the children born to parents who both bear the sickle cell trait;

(3) that efforts to prevent sickle cell anemia must be directed toward increased research in the cause and treatment of the disease, and the education, screening, and counseling of carriers of the sickle cell trait;

(4) that simple and inexpensive screening tests have been devised which will identify those who have the disease or carry the trait;

(5) that programs to prevent sickle cell anemia must be based entirely upon the voluntary cooperation of the individuals involved; and

(6) that the attainment of better methods of prevention, diagnosis, and treatment of sickle cell anemia deserves the highest priority.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the diagnosis, prevention, and treatment of, and research in, sickle cell anemia.

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I to XI".

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), and references thereto, as sections 1201 through 1214, respectively.

(c) The Public Health Service Act is further amended by adding after title X the following new title:

"TITLE XI—SICKLE CELL ANEMIA PROGRAM"

"SICKLE CELL ANEMIA SCREENING AND COUNSELING PROGRAMS AND INFORMATION AND EDUCATION PROGRAMS"

"SEC. 1101. (a) (1) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities, for projects for the establishment and operation of voluntary sickle cell anemia screening and counseling programs as part of other existing public health care programs.

"(2) The Secretary shall carry out a program to develop information and educational materials relating to sickle cell anemia and to disseminate such information and materials to persons providing health care and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated \$20,000,000 for the fiscal year ending June 30, 1973, \$25,000,000 for the fiscal year ending June 30, 1974, and \$30,000,000 for the fiscal year ending June 30, 1975.

"PROJECT GRANTS AND CONTRACTS FOR RESEARCH AND PROGRAMS FOR DIAGNOSIS, PREVENTION, AND TREATMENT"

"SEC. 1102. (a) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for (1) research in the diagnosis, treatment, and prevention of sickle cell anemia, and (2) the development of programs for diagnosis, prevention, and treatment of sickle cell anemia.

"(b) For the purpose of making payments pursuant to grants and contracts under this section there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1973, \$7,500,000 for the fiscal year ending June 30, 1974, and \$10,000,000 for the fiscal year ending June 30, 1975.

"VOLUNTARY PARTICIPATION"

"SEC. 1103. The participation by any individual in any program or portion thereof under this title shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

"APPLICATIONS; ADMINISTRATION OF GRANT AND CONTRACT PROGRAMS"

"SEC. 1104. (a) A grant under this title may be made upon application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each applicant shall—

"(1) provide that the programs and activities for which assistance under this title is sought will be administered by or under the supervision of the applicant;

"(2) describe with particularity the programs and activities for which assistance is sought;

"(3) provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient (or his

guardian) consents to be released; or (B) statistical data compiled without reference to the identity of any such patient;

"(4) provide for appropriate community representation in the development and operation of any program funded by a grant under this title;

"(5) in the case of an application for a grant under section 1101(a)(1), provide assurances satisfactory to the Secretary that (A) the screening and counseling services to be provided under the program for which the application is made will be directed first to those persons who are entering their child-bearing years and secondly to children under the age of 7, and (B) appropriate arrangements have been made to provide counseling to persons found to have sickle cell anemia or the sickle cell trait;

"(6) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

"(7) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

"(b) In making any grant or contract under this title, the Secretary shall (1) take into account the number of persons to be served by the program supported by such grant or contract and the extent to which rapid and effective use will be made of funds under the grant or contract; and (2) give priority to programs operating in areas which the Secretary determines have the greatest number of persons in need of the services provided under such programs.

"PUBLIC HEALTH SERVICE FACILITIES

"Sec. 1105. The Secretary shall establish a program within the Public Health Service to provide for voluntary sickle cell anemia screening, counseling, and treatment. Such program shall be made available through facilities of the Public Health Service to any person requesting screening, counseling, or treatment, and shall include appropriate publicity of the availability and voluntary nature of such programs.

"REPORTS

"Sec. 1106. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this title.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary."

Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the committee amendment.

The Clerk read as follows:

COMMITTEE AMENDMENT

On page 4, strike out line 14 and all that follows down through line 19, and insert in lieu thereof the following:

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1973, \$10,000,000 for the fiscal year ending June 30, 1974, and \$15,000,000 for the fiscal year ending June 30, 1975."

The committee amendment was agreed to.

AMENDMENTS OFFERED BY MR. GIAIMO

Mr. GIAIMO. Mr. Chairman, I offer several amendments and ask unanimous consent that they be considered en bloc as they all deal with the same subject matter.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. GIAIMO: Page 1, line 5, insert "and Cooley's" immediately after "Sickle Cell".

Page 2, line 20, insert "and Cooley's" after "sickle cell".

Page 4, insert after line 25, the following:

"PROGRAMS RELATING TO COOLEY'S ANEMIA

"SEC. 1103. (a) (1) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities, for projects for the establishment and operation of Cooley's anemia screening, treatment, and counseling programs.

"(2) The Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for research in the diagnosis, treatment, and prevention of Cooley's anemia.

"(3) The Secretary may make grants to public and nonprofit private health profession schools for fellowships for training in the diagnosis, treatment, and prevention of Cooley's anemia. Fellowships provided under grants under this paragraph shall be limited to such amounts as the Secretary finds necessary to cover the cost of the training of, and stipends and allowances (including travel and subsistence expenses and dependency allowances) for, the fellows.

"(4) The Secretary shall carry out a program to develop information and educational materials relating to Cooley's anemia and to disseminate such information and materials to persons providing health care and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

"(b) (1) For the purpose of making payments pursuant to grants and contracts under subsection (a) (1), there are authorized to be appropriated \$500,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

"(2) For the purpose of making payments pursuant to grants and contracts under subsection (a) (2), there are authorized to be appropriated \$1,700,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

"(3) For the purpose of making grants under subsection (a) (3), there are authorized to be appropriated \$150,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

"(4) For the purpose of carrying out subsection (a) (4), there are authorized to be appropriated \$25,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Page 5, line 2, strike out "1103" and insert in lieu thereof "1104".

Page 5, line 9, strike out "1104" and insert in lieu thereof "1105".

Page 7, line 4, strike out "1105" and insert in lieu thereof "1106".

Page 7, line 6, insert "and Cooley's" after "sickle cell".

Page 7, line 13, strike out "1106" and insert in lieu thereof "1107".

Mr. GIAIMO (during the reading). Mr. Chairman, I ask unanimous consent that the reading of the remainder of the amendments be dispensed with, since

they are merely technical amendments renumbering the various sections, and that they be printed in the RECORD.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The CHAIRMAN. The gentleman from Connecticut (Mr. GIAIMO) is recognized.

Mr. GIAIMO. Mr. Chairman, I want to commend the committee headed by the distinguished chairman, the gentleman from West Virginia (Mr. STAGGERS) and the gentleman from Illinois (Mr. SPRINGER), the ranking Republican member; also the gentleman from Florida (Mr. ROGERS) who I know has done a great deal of work in this area and has a real dedication to the health needs of the American people.

Mr. Chairman, I support this legislation. I think we must do more in the area of sickle cell anemia research, screening and dissemination of information.

But, I do think if we are going to undertake this job at long last, we should not stop on the 1 yard line—we ought to go the additional 1 yard and do the complete job in this area of trying to find a cure for anemia and to set up a proper screening process.

This legislation commonly known as sickle cell anemia legislation is in fact legislation designed to find a remedy, a cure, treatment, and to set up screening processes for a genetic blood disorder. That is the heart and soul of this type of legislation. The doctors who are engaged in research in this area are trying to obtain more knowledge and to find cures for this genetic blood disorder.

Now, what is this genetic blood disorder? It is prevalent in two important types that few laymen and Congressmen heard about, just a few short years ago. If you had asked the man in the street what sickle cell anemia was 5 years ago, very few would have known. The same goes for Cooley's anemia.

Basically, sickle cell anemia is a genetic blood disorder manifested in an irregularity in the red blood corpuscles, which affects predominantly, as the chairman of the committee said, in 99 percent of the cases, people of the black race. We have 25 million blacks in the United States. And we must get started in that work.

Cooley's anemia, on the other hand, is a similar, very much the same genetic blood disorder affecting the red blood corpuscles, and this type of anemia affects not the black race but those peoples from the Mediterranean areas, of whom there are more than 20 million in the United States.

Who are they? There are Italians, there are Greeks, there are Spanish-speaking people, people of Spanish background, which includes not only those from Spain but those from Puerto Rico, those from Mexico, and the great Spanish areas of the Southwest. Also, many Mediterranean people have intermarried in Europe and the United States with other peoples not from the immediate Mediterranean area. So conceivably in the United States there are upwards of 20 or 30 million people or more who carry the genetic disease, or the gene which

can bring about Cooley's anemia. Cooley's anemia is a very similar type of malady wherein the children as in the case of those with sickle cell anemia, rarely live past the age of 30 years of age, if they attain that. Children with Cooley's anemia are incurable and must be kept alive with blood transfusions at least every 3 or 4 weeks.

If we are going to have a large Federal effort in this area, as we are and as we should, let us not put ourselves in the position of saying the Government is going to help those children who are afflicted with sickle cell anemia, but that it will not help the 200,000 people in this country who are afflicted with Cooley's anemia. Are we going to say "no" to the many millions who may not be afflicted but who may be carriers of Cooley's anemia, to those people whose ancestors came from the Mediterranean area, are we going to say, "We are not going to do anything for your children or for you."

The disease is still relatively small in number—200,000. The best time to control this disease would be before it spreads, and the way to do that is to set up these screening processes at the same time that we do research.

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

(By unanimous consent, Mr. GIAIMO was allowed to proceed for 5 additional minutes.)

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from New York.

Mr. BIAGGI. I commend the gentleman from Connecticut for his amendment and also for his affirmative approach to the fundamental legislation dealing with sickle cell anemia. I would like to associate myself with his remarks.

Mr. Chairman, I support the amendment offered by the gentleman from Connecticut (Mr. GIAIMO). This amendment would include funds for research, training, screening, prevention and treatment programs for Cooley's anemia under this act.

Cooley's anemia is a genetic blood disorder which is similar to sickle cell anemia. At one time, this disease only afflicted persons from the Mediterranean area. Over the course of generations, however, the disease has been carried to persons of a wide variety of backgrounds. Sickle cell anemia is almost identical to Cooley's anemia and the methods of treatment and research are very similar. The primary difference between the two is that sickle cell anemia is confined almost exclusively to members of the black race, while Cooley's anemia afflicts a wide variety of people. Indeed, a cure must be found for both of these fatal diseases.

Cooley's anemia has stricken approximately 200,000 young Americans. They suffer from pallor, softened bone structure and other grievous symptoms. Most of the victims die before they are 20 years of age. Unfortunately, as with sickle cell anemia there is no known cure for this illness. In addition, the victims must undergo a continuum of blood transfusions.

Mr. Chairman, these dreaded afflictions are very closely related. In fact, an indi-

vidual may have sickle cell anemia and Cooley's anemia at the same time, but a separate screening process is necessary to detect Cooley's anemia. In other words, if it is discovered that a person may be suffering from sickle cell anemia he will not know that he has Cooley's anemia until a separate test is conducted. For these reasons, I support the amendment offered by the gentleman from Connecticut (Mr. GIAIMO) so that a coordinated attack can get underway to combat both of these genetic blood disorders.

Time is of the essence. We must get these programs underway immediately before these diseases claim the lives of more of our youth.

Mr. MONAGAN. Mr. Chairman, will the gentleman yield?

Mr. GIAIMO. I yield to the gentleman from Connecticut.

Mr. MONAGAN. Mr. Chairman, I wish to compliment the gentleman on his amendment, which I support.

The National Sickle Cell Anemia Act which we are now considering is progressive legislation and I am confident that all present comprehend the misery and suffering which this dreaded disease has caused in the past and continues to cause for thousands of our fellow Americans. But we must also consider the far reaching and devastating effects of Cooley's anemia.

Although a distinct disease Cooley's anemia, like sickle cell anemia is a disorder of the hemoglobin of the blood and is transmitted genetically. There are over 100,000 Americans afflicted with this painful disease—and tragically the majority are children. The disease becomes manifest during the first year of life. Those afflicted require frequent and costly blood transfusions to correct their anemia. They also suffer malformed development leading to brittle, easily broken bones and alteration in facial appearance. In most instances, death occurs before the 20th year.

The existing programs in the research of the causes and possible cures for this disease are totally inadequate. In fact, at this time very little is known about Cooley's anemia even though it was described as a separate and specific type of blood disease about 1925 by Dr. Thomas B. Cooley. These programs must be given adequate monetary resources to carry their activities to effect.

We must not continue to neglect those individuals afflicted with Cooley's anemia. I have received numerous communications concerning the tragic experience of years of anguish and enormous medical expenses and the ultimate death of a son, daughter, nephew, niece or grandchild. Decisive action must be taken by this Congress before additional children become the victims of this killing malady. I urge my colleagues to support the amendment which Mr. GIAIMO has offered to provide \$7.1 million for research, screening, treatment, and training programs to ease and eventually eliminate the agony of Cooley's anemia.

Mr. GIAIMO. I thank the gentleman. Let us do a complete job so that when children come in for screening they are not turned away because they may not

be suffering from sickle cell anemia but, in fact, may be suffering from Cooley's anemia.

I have a letter from Alexander Wiener, M.D., New York University Medical Center. Some may ask, "Who is Dr. Wiener?" He is the discoverer of the Rh factor in children. He urges support for this amendment and says in effect: Let us get started on the entire job in anemia, which is found prevalently in two types, sickle cell and Cooley's.

Yale University has done extensive work in this area. Dr. Harold A. Pearson, professor of pediatrics at Yale, encourages us to include Cooley's anemia.

We are not going far afield. We are not bringing in all types of illnesses and diseases. We are not making a Christmas tree out of this legislation. We are dealing with the same genetic blood disorders which bring about anemia, and we are saying they are found in two types, sickle cell and Cooley's, one which affects blacks and one which affects those whites of Mediterranean origin. Let us get started on both now.

We are going to save ourselves a great deal of suffering and hardship for families in the future if we can identify these diseases and counsel those people who may be carrying the genes in them and passing them on to their children yet unborn. Let us not do half the job.

Also I want to commend the many people who have worked with me in this connection in recent months. I would like to commend especially my good friend, the gentlewoman from Connecticut (Mrs. ELLA GRASSO) who has taken an extreme interest in this matter, as well as the gentleman from Massachusetts (Mr. CONTE) and the gentleman from New York (Mr. POBELL) and the gentleman from New Jersey (Mr. MINISH) who could not be here, because he had to be back in New Jersey, but he is very strongly in favor of this legislation.

I think the committee can do this. It will be said and it has been said in the committee report that they would like to hold some hearings and do some work on this, and that they are not opposed to this legislation. I know they are not, but the hearings are going to be purely a repetition of the hearings we have had. We are going to be having the same people come in and tell us what the disease is, and tell us that they do not know too much about it, that there is no hope of a cure at the present time, that they want to do more research, and that they want to set up screening and counseling services so they can find the people who are carrying the genetic disorder.

I do not think we should wait. I think once we have started on this course, and once we have undertaken to do something about sickle cell anemia, we should go that additional 1 yard over the goal line and do something for the people who are suffering from Cooley's anemia, who are suffering the difficulties we find with those who are suffering from sickle cell anemia.

Mr. Chairman, I urge favorable treatment of the amendment.

Mr. CONTE. Mr. Chairman, I rise in support of the amendment offered by my

distinguished colleague, the gentleman from Connecticut. I wish to commend him now for the great service he is performing in alerting us all to the very real dangers of Cooley's anemia.

I might say here that I have done all I could in my service on the Subcommittee on HEW of the Committee on Appropriations to see that the sickle cell anemia was fully funded last year, and I will continue to do so this year.

The alarming factor about this disease is the rapidly rising number of people that are being afflicted by it. At one time the disease was confined only to persons of Mediterranean background. Now, however, it has spread through intermarriage to persons of Jewish, Scandinavian, German, and even oriental backgrounds. Cooley's anemia now affects about 200,000 young Americans, few of whom will survive the age of 20. It spares no race or nationality.

The time to act is now. We have seen the tragedy that delay has wrought with regard to sickle cell anemia. Let us not compound this tragedy by waiting until Cooley's anemia claims more victims than sickle cell anemia.

Let us seize the initiative now. To my mind, this legislation is the perfect vehicle for launching an attack on both these diseases. Both are genetic blood disorders. Both share common traits and universal modes of research and treatment. Both work an unspeakable severity upon their victims. Both can strike an individual at the same time.

I urge my colleagues to support this amendment which would provide funds for research, screening, treatment, and training programs for Cooley's anemia. Its acceptance would in no way diminish the importance we are placing on finding a cure for sickle cell anemia. Rather it would expand our dedication and commitment by authorizing a concerted effort to control both these severe blood disorders.

Thank you, Mr. Chairman.

Mr. BIESTER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to my good friend from Pennsylvania.

Mr. BIESTER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Connecticut. I commend him for his initiative and I commend the gentleman in the well for his support.

Mr. CONTE. I thank the gentleman very much.

Mrs. GRASSO. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I rise in support of the amendment offered to H.R. 13592 by my friend and colleague from Connecticut (Mr. GIAIMO).

As the first sponsor of legislation introduced this session of Congress to establish a national program to seek an effective treatment and cure for sickle cell anemia, I would like to commend the gentleman from West Virginia (Mr. STAGGERS), the gentleman from Florida (Mr. ROGERS), and the entire committee for the bill before us. Passage by the House of H.R. 13592, the National Sickle Cell Anemia Prevention Act, will provide the vital beginning of necessary medical programs for the diagnosis, prevention,

and treatment of sickle cell anemia. For far too many years this disease has brought pain, suffering, and death to its victims. The time for providing the necessary Federal funding to meet this medical crisis is long overdue.

While applauding this attempt to combat such a dread affliction, I believe that this amendment to provide \$7.1 million for a program to fight Cooley's anemia would greatly strengthen the bill before us.

Today, few Americans have heard of Cooley's anemia—save the families and friends of those unfortunate individuals afflicted with this disease. Although two distinct diseases, Cooley's anemia and sickle cell anemia have certain similarities. Like sickle cell anemia, Cooley's anemia is a genetically transmitted hemoglobin disorder. Individuals suffering from the disease suffer from severe anemia, enlargement of the spleen, characteristic changes in the skin and facial features, and a greatly shortened life expectancy. At this time no specific therapy is available for the victims of Cooley's anemia, although periodic blood transfusions will keep individuals alive through their teens.

Cooley's anemia most frequently appears in the descendants of people from the Mediterranean littoral. At this time the possibility exists that more and more people may be affected as succeeding generations intermarry and pass the trait to other ethnic groups.

Adoption of this amendment, Mr. Chairman, would enhance the purpose of the National Sickle Cell Anemia Prevention Act. This bill establishes a procedure for a national attack against a genetic blood disease. Why limit the scope of the legislation to diagnosis, prevention, and treatment of a single anemia? Now is the time for the Congress to provide the funds requested to assist programs dealing with a similar genetic blood disease.

Let us not wait until the incidence of Cooley's anemia reaches frightening proportions. Let us begin a concerted attack on Cooley's anemia by providing the funds needed to initiate the treatment of this disease.

It is my heartfelt hope that the House will pass this important amendment to H.R. 13592.

Mr. COTTER. Mr. Chairman, I rise in strong support of H.R. 13592, the National Sickle Cell Anemia Control Act of 1972.

The need for this legislation is obvious. Over 2 million American youngsters suffer the ravages of this dread disease. For too long we have not paid sufficient attention to this genetic blood disorder, and our current situation is directly attributable to this neglect. This disease primarily affects our black citizens and the ravages of this disease not only cost an incalculable total in human suffering, but deprive our Nation of the contributions of these individuals.

By supporting H.R. 13592 we are moving to end this neglect. Action is overdue and I am happy that in this, my first term, the House is acting to correct this oversight. This legislation provides over \$100 million to launch a coordinated at-

tack on this disease. This \$100 million will be used for necessary research, training of medical personnel, and screening and testing programs, and, of course, prevention and treatment of the disease.

I earnestly support this needed legislation.

On another matter, Mr. Chairman, I will support an amendment offered by my good friend and distinguished colleague from Connecticut (Mr. GIAIMO) to add \$7.1 million for new research into Cooley's anemia. These additional funds would be used to study the causes and find a cure for Cooley's anemia, a disease which primarily affects our citizens of Italian and Greek descent.

I urge my colleagues to support this bill and this amendment.

Mr. KOCH. Mr. Chairman, I rise in support of H.R. 13592, the National Sickle Cell Anemia Prevention Act. It is only through an overwhelming national commitment that we can make real inroads into the conquest of this most painful and often fatal disease.

This hereditary blood disease attacks an average of one in every 500 black children born, and it is estimated that 50,000 black Americans currently suffer from it. At present there is no known cure, and most treatment methods are in experimental states. And although it ranks as one of the most prevalent childhood diseases—with an average of 1,155 new cases discovered annually, compared with 1,206 new cases of cystic fibrosis and 813 of muscular dystrophy—until very recently federally funded research in this area was virtually nonexistent.

Now, with this national prevention program, we can be hopeful that successes will come from this concerted effort. Medical research, when adequately funded, can have significant results, as has been demonstrated many times already. This act creates a research program for diagnosis and treatment together with a voluntary screening and informational program. Such programs would be very valuable in identifying the 8 to 13 percent of the black population that is estimated to carry this genetic sickle cell trait and in providing them with the counseling services so important in dealing with this disease.

It is outrageous how Congress has neglected for so long taking decisive action to initiate a sickle cell anemia prevention program, and I call upon Congress now to support H.R. 13592 and to direct a full-scale effort toward the eradication of this disease.

Mrs. HICKS of Massachusetts. Mr. Chairman, I rise in support of the amendment. I should like to commend the gentleman from Connecticut (Mr. GIAIMO) and also all Members who are supporting this amendment.

This amendment will authorize Federal funding for medical research and screening programs intended to assist the victims of Cooley's anemia and the millions of children yet unborn, who may have the disease. Cooley's anemia is a disorder of the blood's hemoglobin transmitted genetically. The severe form of Cooley's anemia known as *Thalassemia* or *Mediterranean anemia* is found in one

of every 1,000 American children born of parents whose ancestors were natives of countries surrounding the Mediterranean Sea—predominantly of Greek and Italian origin.

The time is now for the Federal Government to provide the necessary funding for research and detection funds for those who suffer from this disease. This Congress should make a priority effort to gain control of and eliminate Cooley's anemia.

Mr. CARTER. Mr. Chairman, I move to strike the last word.

I am sympathetic with the distinguished gentlemen and gentlewomen who would amend this bill.

Cooley's anemia only affects children usually under 1 year of age. It is characterized by an increased fragility of the red blood cells; that is, the red blood cells just will not stand up, they burst and the child becomes anemic and dies.

Actually, a relatively small number of people throughout the United States are involved.

We have a much needed bill here today, one which has been studied for some time but which has not received sufficient appropriations or sufficient emphasis; that is, the bill concerning sickle cell anemia. I do not believe it is a propitious time to dilute this legislation we have here today.

We might, if we took in all the anemias, consider many more. We do not have just sickle cell anemia, or sickle-mia, as it is called, and Cooley's anemia, but we have also many more which are equally devastating, and are some of the worse diseases that are known.

For instance, we have pernicious anemia. We have anemia due to deficiency of folic acid. We have anemia due to iron deficiency. We have anemia due to pyridoxine deficiency. We have anemia due to different conditions of the hemoglobin, a lack or a deficiency in the SC hemoglobin. There are so many that if we covered all of them this bill would be a monstrous thing, a Christmas tree, and we would be opening up a great can of worms.

So let us today agree to study Cooley's anemia, to have hearings on that at some time in the future, and if it deserves appropriations we can do that at a later day.

At the present time we are confronted by a disease, sickle cell anemia, which does present a much greater problem to a larger segment of American society today. Let us continue as we have begun and target in or zero in on this particular disease of sickle cell anemia.

If we do not concentrate on this, the effect of our efforts today will be greatly diluted. Therefore, I would urge that the amendment be defeated.

Mr. ROY. Mr. Chairman, I rise in opposition to the amendment.

I commend the gentleman from Connecticut (Mr. GIAIMO) for his excellent presentation and for the fact that he brought to the attention of this body a disease which is indeed a severe disease.

I do not feel, however, that it is proper to amend this bill which is specifically directed toward sickle cell anemia by adding provisions for Cooley's anemia.

I think there is one important thing that should come to the attention of this body; namely, at the present time money is being spent in the area of research on Cooley's anemia. In fact, the information I have received is that \$630,000 is being presently spent on Cooley's anemia and \$1.2 million is being spent on sickle cell anemia. This is a ratio of 1 to 2. The ratio of the number of people with Cooley's anemia versus those with sickle cell anemia is probably in the neighborhood of 1 to 40. The American Public Health Association informed me that the best estimate they could give with regard to the number of people afflicted with Cooley's anemia was 15,000. The Cooley's Anemia Society estimates it is 100,000. I heard the figure today of 200,000. We are aware of the fact—and it is very well confirmed—that there are over 600,000 people with sickle cell anemia. By the same token, we are aware of the fact that there are 2.5 million people with the traits of sickle cell anemia.

What we are doing with this bill, which is of extreme importance, is we are finding those with sickle cell anemia traits. We are making money available to test a large population so we know who has the traits and what marriages are likely to result in sickle cell afflicted offspring. In this way we have a chance of bringing about a stop to sickle cell anemia.

The great question I have with regard to Cooley's anemia is whom do we test? It is apparent that those of Mediterranean origin, the Italian people, the Greek people, and the Middle Eastern people, are afflicted, but, as was so well pointed out by a number of people who spoke before me, the marriages have been great within and without these groups and, in all probability, if we would test all the people in this Nation who are likely to have Cooley's anemia, we will be testing about half or more than half of the population.

How can we test that number? The only test presently available for Cooley's anemia traits is hemoglobin electrophoresis, which usually costs \$20 per person. If we are going to spend \$20 per person to test, by Mr. GIAIMO's own admission, perhaps 20 million or 30 million people, then we are talking about a tremendous appropriation of money.

Again I want to point out that the only way we can presently do anything effective about sickle cell anemia, and Cooley's anemia is by identifying those with the traits before they mate and before they have offspring, because the offspring will be born with the disease. After we identify those with the disease we can only treat the anemia.

So we have no idea and personally I have no idea and those on the committee who have had the opportunity to study it have no idea what the cost would be to have an effective testing program for the genetic trait of Cooley's anemia.

By contrast, with sickle cell anemia, we know that we can test all black people in this Nation for probably \$100 million or less and, as my distinguished colleague, Dr. HALL pointed out, we can test them rather inexpensively, for perhaps as little as 40 cents per person rather than the \$20 per person to test for Cooley's trait.

For these reasons, I oppose the amendment.

I think it is worthwhile that Cooley's anemia has been brought to our attention and that the committee may indeed wish to hold hearings on this disease. However, to bring this in as an amendment to this particular bill would not be proper nor appropriate; for we are zeroing in, as our chairman has stated, on sickle cell anemia which afflicts a great number of black people in this Nation.

Therefore, Mr. Chairman, I urge this body to vote down the amendment offered by the gentleman from Connecticut (Mr. GIAIMO).

Mr. SYMINGTON. Mr. Chairman, will the gentleman yield?

Mr. ROY. I yield to my colleague from Missouri.

Mr. SYMINGTON. Mr. Chairman, I think the members of the committee should take into account what the gentleman from Kansas has said because of its application to the need for hearings on the questions he raises concerning the manner in which Cooley's anemia must be studied and the feasibility of various approaches to it, none of which we have had an opportunity to observe or hear about from qualified people in the scientific and medical disciplines.

I certainly and I fervently hope and trust that the opposition of the committee to the suggestion that Cooley's anemia should not be tacked onto this bill is not misinterpreted as a lack of interest or concern on the part of the committee in that disease.

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. SYMINGTON. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Missouri is recognized for 5 minutes.

Mr. SYMINGTON. Mr. Chairman, I have asked for this time to simply conclude by saying that the questions already raised here on the floor concerning Cooley's anemia should make us all realize that this is no time to add this amendment to a bill that has been worked on for weeks and weeks and, in fact, months, in order to give us an understanding of a very difficult disease, sickle cell anemia. I do not doubt that Cooley's anemia is equally difficult to understand and equally deserving of hearings. I hope such hearings can be held, but we cannot hold them here on the floor of the House.

Mr. NELSEN. Mr. Chairman, I move to strike the requisite number of words. Mr. Chairman, I shall be very brief.

I would like to point out the fact, as has been mentioned previously, that this subcommittee has produced a vast amount of health legislation such as the health manpower bill, the cancer bill, the drug abuse bill, and I could go on and name many, many more bills which we have brought out.

As I pointed out earlier we have some experts on our committee that help to guide our course. It was the feeling of our committee in considering this bill that we should confine our efforts in this particular case to sickle cell anemia. I wish to add that the Giaimo amendment

brings to our attention another problem to which we should give more thought and consideration before we proceed to pass legislation in regard to it.

I think that it would be most inappropriate to tie it to the bill we now have before us.

So, I would hope the amendment is defeated and that we may go on and pass this bill in its present form to deal with a problem that is so extensive and so severe, as has been pointed out today by the doctors on our committee.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Connecticut (Mr. GIAIMO).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GIAIMO. Mr. Chairman, I demand tellers.

Tellers were refused.

So the amendments were rejected.

Mr. MICHEL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as a member of the Appropriations Subcommittee having jurisdiction over the funding of our health programs, I am concerned over the impression some people are giving that nothing is being done on the sickle cell problem.

In fact, a great deal is being done, the Federal budget for programs to deal with this disease was increased tenfold from fiscal 1971 to fiscal 1972—from \$1 million to \$10 million.

For the fiscal year beginning this July, the administration has proposed another 50-percent increase, which would bring the funding level to \$15 million. And these are dollars which would bear directly and specifically on sickle cell anemia. Throughout the National Institutes of Health we have numerous research programs and projects which may provide some of the answers we are seeking for sickle cell. Millions of dollars are going into basic research on blood and genetic abnormalities, the results of which may shed light on how to effectively combat sickle cell anemia.

For fiscal 1973, the administration is proposing to spend some \$4.5 million for comprehensive research and community service centers. Another \$6.5 million would go into screening and education clinics. Some \$3.7 million would be expended directly on research through the National Heart and Lung Institute, and other national institutes. About a quarter of a million dollars would go into information and education efforts apart from what I have just mentioned.

(Dollars in millions)

	Fiscal year—	
	1972	1973
1. Comprehensive research and community service centers.....	\$4.5	\$4.5
2. Screening and education clinics.....	1.8	6.55
3. Research.....	3.7	3.7
4. Information and education.....	0	.25
Total.....	10.0	15

¹ To be administered by Health services and Mental Health Administration.

² Includes \$1,000,000 in National Institute of Arthritis and Metabolic Diseases, National Institute of General Medical Services, and the National Institute for Child Health and Development. The remaining \$2,700,000 is in heart and lung.

The bulk of the additional \$5 million proposed for fiscal 1973 would go into the screening and education clinic program to be conducted primarily through the Health Services and Mental Health Administration.

At least three methods of sickle cell anemia therapy are thought to be promising and warrant a clinical trial to find out how effective they are. The first phase of this clinical study is now underway. Comprehensive centers of research and service will serve not only as teaching institutions, but as places where research can be conducted and the results of that research can be made available directly to the people who are affected by this disease.

I do not quarrel with the intent behind this legislation, but I think we should try to put it in perspective. A substantial effort is already being made to deal with this disease, and as a member of the Appropriations Committee, I intend to see that it continues. However, there are many other diseases that seriously affect large segments of our population, and in the context of the dollars we have available for health programs I believe we should try to maintain a reasonable, overall balance of effort.

Mr. HORTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of H.R. 13592, the National Sickle Cell Anemia Prevention Act.

For those Americans who have worked so long to gain national awareness of the sickle cell problem, House consideration of this measure is rightfully a source of tremendous encouragement. I think we would have to admit that, in the not too distant past, few of us were even aware of sickle cell anemia, much less sensitive to the toll this vicious disease takes in pain, suffering, and death of black Americans.

In retrospect, it is difficult to understand the low priority which has been given to the study of sickle cell anemia. History shows us that sickle cell disease has been known for more than 60 years and the fundamental nature of its biochemical cause for more than 20 years. When examining the incidence of the disease, we find that one out of every 12 blacks is a carrier of the sickle cell trait. One out of every 500 black children born in this Nation is afflicted with sickle cell anemia and faces a short, agonizing life. But our support of biomedical research on sickle cell anemia has not been given the priority which one would expect if priorities for research were determined by the seriousness and incidence of a disease. That progress which has been made on sickle cell disease is the work of a few devoted and brilliant individuals—in frequent instances, the dogged, determined efforts of black physicians working with limited resources.

With the passage of H.R. 13592, we can establish for the first time a significant Federal program for the prevention of sickle cell anemia. The legislation provides \$105 million over a 3-year period for widespread screening for the sickle cell trait as well as research programs to find ways of diagnosing and curing the disease. On the whole, I be-

lieve the committee has devised a commendable program, though I would have preferred bringing the Veterans' Administration and the Defense Department directly into the screening programs for sickle cell disease, as does the bill already passed by the Senate.

Mr. Chairman, many of us were sponsors of the various sickle cell bills considered by the committee. While we may have differed somewhat over what approach to take, we were nevertheless united in calling for a national attack on sickle cell disease. I am confident that the National Sickle Cell Anemia Prevention Act would be a tremendous step forward in establishing the level of national commitment needed, and I hope it will be met with our unanimous support.

Mr. HALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like simply to add that had I had an opportunity to speak on the last amendment I would have quoted from Dr. Robert Nalbandian, M.D., writing in "Laboratory Medicine," pages 12-50, May 1971, and further quoting Dr. Linus Pauling; the fact that:

Sickle cell anemia is the first disease to have become thoroughly understood, the first disease for which a clear and complete explanation of its manifestations can be formulated, and for which we have developed a method not only for controlling the crisis of the disease, but it is the first disease for which there is a known molecular basis for its origin, or pathogenesis, a molecular basis for the diagnosis and a molecular basis for treatment.

As an old surgeon with a rusty scalpel, we had nothing to do with the treatment of this disease, but I did study it years ago under Dr. H. Gideon Wells and E. R. LeCount, when it was first beginning to be understood; and it would in my opinion be an error to complicate this bill with the treatment of another disease which has not been fully exploited, and for which the research and technical breakthrough has not been accomplished for a mass screening and treatment; and the panacea of pouring more funds and personnel into a project not yet ripe for bearing.

Therefore I consider the action of the committee on this amendment was good and proper.

Mr. BIAGGI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of this bill.

Mr. Chairman, the National Sickle Cell Anemia Control Act is an urgently needed piece of legislation. This hereditary disease, which is found primarily among members of the black race, has remained incurable primarily because of a lack of Federal support to find a cure. This fatal disease results in the occurrence of an abnormal hemoglobin in the red blood cells. It causes its victims to suffer prolonged agonizing pain sometimes lasting for years before they finally die.

What is even more tragic, however, is that the primary victims of this disease are young children. Nothing is more heartbreaking than to see one of these children suffering from anemia, pallor, weakness, poor physical development, jaundice, enlargement of organs like the

heart, liver, and spleen, and even ugly skin ulcers. They also are more susceptible to infections, paralysis, and blindness.

The effect upon the black community of this one disease is so sizable that a continued effort to find a cure must be made immediately. The anemic, or active form of the disease occurs in about one in every 500 black births in the United States. The median age of survival is 20 years. Moreover, the extensive hospitalization required in the treatment of this disease forces the victim to miss school, work, and the many other normal functions of their daily lives that contribute to growth and development.

I have cosponsored legislation which would provide funds for research toward finding a cure for this horrible disease and I wholeheartedly support the bill under consideration.

Another, closely related hereditary blood disorder which affects approximately 200,000 young Americans is Cooley's anemia. This disease was originally found only among persons of Mediterranean background, but due to intermarriage through the generations, it now affects a wide variety of persons of differing backgrounds.

The research methods, screening, prevention and treatment programs could easily be integrated with the sickle cell anemia program. For this reason, I will support the amendment which will be offered by the gentleman from Connecticut (Mr. GIAMMO) which would include Cooley's anemia in this legislation.

Over the course of the past several years we have spent a great deal of money to conquer such hereditary diseases as cystic fibrosis or phenylketonuria. We must now make an all-out assault to combat sickle cell anemia and Cooley's anemia as well.

We must continue our struggle to rid the world of all diseases which afflict mankind. This cannot be accomplished, however, without the Federal research funds necessary to carry out this noble objective.

I hope that my colleagues will join with me in supporting this major piece of legislation. I would also hope that the amendment offered by the gentleman from Connecticut (Mr. GIAMMO) will be passed and thus make the act even stronger.

Today isn't soon enough to begin the fight to wipe these related diseases from the face of the earth.

(Mr. PICKLE asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. PICKLE. Mr. Chairman, sickle cell disease, the most common inherited disorder in the United States, is believed to be present in more than 2 million black Americans. Although the disease occurs in a relatively benign "carrier" form known as "sickle cell trait," approximately 1 in every 500 black infants is born with the life-threatening form of the disease called "sickle cell anemia." There is no known cure.

The disease is due to a genetically determined defect in hemoglobin, the respiratory pigment in red blood cells which enables them to carry oxygen throughout the body. Under conditions of di-

minished oxygen supply or physical or emotional stress, the abnormal hemoglobin molecules become attached to one another in such a way as to distort the normally doughnut-shaped red cells into a distinctive crescent or sickle-shape, hence the name sickle cell anemia. The inability of these sickled cells to pass freely through smaller blood vessels creates a "logjam" effect, blocking the flow of blood surrounding tissues and causing the extreme pain known as the sickle cell "crisis."

A person is relatively safe if he carries the sickle cell trait, however, it is important that the person realize the incidence of sickle cell anemia should he marry someone who also carries the trait. If both parents carry the sickle cell trait, they stand a 1-in-4 chance that one of their offspring will have sickle cell anemia, hence the importance of counseling and education programs to advise future parents who are double trait carriers of the problems to be expected if they should wed.

In 1970, \$100,000 was spent on sickle cell research in a Nation that spent \$1.6 billion on research. Four million dollars were spent on cystic fibrosis which strikes one in 3,000, and \$10 million were spent on muscular dystrophy which strikes one in 5,000. Moreover, a total of \$14 million were raised by various charity organizations supporting cystic fibrosis and muscular dystrophy whereas the National Sickle Cell Anemia Foundation was able to raise only about \$75,000.

Today I rise in support of the National Sickle Cell Anemia Act. Although this bill does not go quite as far as some would like, it is a certainly giant step in the direction of curbing this dread disease.

Among other things, this bill would provide:

First, \$75 million over the next 3 years for screening, counseling, and educational and informational activities.

Second, \$30 million over the next 3 years for research in the diagnosis, treatment, and prevention of sickle cell anemia and the development of programs for diagnosis, treatment, and prevention of sickle cell anemia.

Third, all participation in any of these programs would be voluntary.

Mr. Chairman, I urge the adoption of this legislation. We must not wait any longer to direct our resources against this malady.

Mr. WIDNALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, at this time I would just like to extend my full support on this legislation. It is a measure that is urgently needed. I wish to commend the members who sponsored this bill, for the work they have done on it, as have many other Members of the Congress, and I want to congratulate the committee on the work they have done on the bill they have brought in.

Mr. Chairman, I most earnestly urge that the House will overwhelmingly approve this bill, H.R. 13592, the National Sickle Cell Anemia Prevention Act.

Last October, I cosponsored H.R. 11257, which was also titled the National Sickle Cell Anemia Prevention Act.

Subsequent committee action by the

Committee on Interstate and Foreign Commerce resulted in the unanimous passage of a clean bill, the one we vote on today. I am pleased that the committee has taken expeditious action on this urgent problem.

It is imperative that the Nation move quickly on this problem because the increase in sickle cell anemia cases can be stopped cold with education, diagnosis and counseling.

The magnitude of this problem is indicated by the some 50,000 Americans who suffer with sickle cell anemia. However, the potential tragedy is much greater. An estimated two and a half million Americans have the trait. Their ignorance of the genetic consequences which result from a couple who both have the trait and bear children, can mean a generation of Americans severely afflicted by sickle cell anemia.

While sickle cell anemia strikes one in 500 black persons, the fact that one in ten carries the trait should alert us to the great potential danger in this blood disease.

Recent tests in Washington, D.C. schools, which have been limited by a lack of funds, indicate that a thorough testing of the students is necessary.

The money we authorize here, \$25 million for fiscal 1973, \$35 million for 1974 and \$45 million for 1975, can carry out the programs initiated, such as that in the District school system.

Support is needed now and I urge my colleagues to recognize the need for immediate approval of this bill.

Mr. TIERNAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to express my strong support for H.R. 13592, the National Sickle Cell Anemia Control Act.

The tremendous need for this legislation is undeniable. Approximately 40,000 to 50,000 persons in this country have sickle cell anemia, and an additional 8 to 13 percent of the black population carry the trait. This genetic disease occurs in 1 out of every 500 black babies, most of whom do not live beyond the age of 20.

The bill we have before us today would provide for research, training, screening, prevention, and treatment programs. The \$100 million provided for in H.R. 13592 should be looked at as only a beginning, but it is certainly a giant leap toward establishing a national commitment to effectively deal with sickle cell anemia.

To date we as a nation have not even devoted to this disease a significant fraction of the money we have applied to research into other childhood diseases. And yet back in 1967 there were approximately 1,155 new cases of sickle cell anemia, compared with 813 cases of muscular dystrophy. This is not to say that we should devote less money to the cure of muscular dystrophy, but that we should substantially increase our commitment to deal with sickle cell anemia.

We have ignored this disease too long. I urge all of my colleagues to support H.R. 13592.

Mr. Chairman, I also wish to lend my support to the amendment proposed by my able colleague from Connecticut (Mr. GIAMMO) which would provide support for grants, contracts, and fellowships for re-

search and treatment of Cooley's anemia. Cooley's anemia, sometimes called thalassemia, is also a genetically determined form of anemia which occurs primarily in peoples of Mediterranean origin. In this disease, the fundamental defect is inability to synthesize adequate amounts of hemoglobin, the substance in red blood cells which enables them to carry oxygen. Although the true incidence is not known and obviously would vary from area to area depending upon the percent of population of Mediterranean origin, the best available estimates are that about 200,000 individuals in this country carry the gene. Unfortunately, much needs to be learned concerning treatment of the disease and I believe that major emphasis on research on Cooley's anemia is warranted. I therefore support the efforts of my colleague from Connecticut to include support for Cooley's anemia as part of this bill.

Mr. HALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I said before, during the general debate, and specifically during the 5-minute rule on the bill, there has never been a disease that has been as well researched, and whose time has come for turning of Federal support in the domestic area, as is the case of sickle cell anemia.

Its origin is most interesting, probably having to do in the black areas of Africa with nature's own evolving of a defense mechanism against malaria of the most devastating variety.

The methods by which it causes its destruction are now well known and, as I said, very recently, the molecular etiology or pathogenesis of the disease is now thoroughly understood, and a rapid screening method of inexpensive molecular—and computerized—diagnosis has been well developed and utilized.

Finally, the treatment in the form of molecular treatment is available, and it is now predicted will become as simple as the preventive treatment of poliomyelitis and other diseases. Indeed, I would like to join with the members of the committee, and particularly the gentleman from Grand Rapids, Mich., the distinguished minority leader of the House (Mr. GERALD R. FORD) in referring to the beautiful work done by one of our outstanding groups of researchers and technicians in developing the new replacement of the proprietary test for hemoglobin-S.

I would even commend the issue of Laboratory Medicine published by the American Society of Clinical Pathologists for May of 1971 and its editorial and its "critique," or seminar on the actual diagnosis, treatment and prophylaxis of sickle cell anemia.

Even the vaunted Journal of the American Medical Association for December 13, 1971, has both editorials and a compendium of articles by the same doctor who did his work in Grand Rapids, Mich., in this area, the distinguished Dr. Robert M. Nalbandian, Associate Pathologist of the Department of Pathology at Blodgett Memorial Hospital in Grand Rapids.

I have not been privileged to see the

television film that was prepared locally and privately, but I do want in closing to simply read the statement by twice Nobel Laureate, Dr. Linus Pauling, when he said that sickle cell anemia is the first disease to have become thoroughly understood.

This is an outstanding statement, all of its own.

In concluding my remarks, I will simply request that we again ascertain that the breakthrough in using simple urea, sodium citrate, or other chemical drugs for mass screening technique and diagnosis plus treatment, might well be considered in lieu of the expensive or proprietary Sickledex tests.

I have nothing against proprietary tests developed by private enterprise research and perpetrated by people who are available, but I would be against using this with taxpayers' funds when there are such simple and decisive molecular screening tests available using the simple chemicals available at less than \$1 per pound for such tests, plus preparation costs.

Mr. Chairman, the following is an article by Dr. Robert M. Nalbandian to which I referred earlier in my remarks:

[From Laboratory Medicine, May, 1971]

THE MOLECULAR BASIS FOR THE PATHOGENESIS, DIAGNOSIS, AND TREATMENT OF SICKLE CELL DISEASE

(By Robert M. Nalbandian, M.D.)

(NOTE.—Robert M. Nalbandian, M.D., is Associate Pathologist, Department of Pathology, Blodgett Memorial Hospital, Grand Rapids, Mich. Dr. Nalbandian is the editor of a new book, Molecular Aspects of Sickle Cell Hemoglobin: Clinical Applications, with a foreword by Professor Linus Pauling, twice Nobel Laureate, published this month by Chas. C. Thomas Co., Springfield, Ill.)

Contrary to current discussions in the medical and paramedical press, sickle cell disease is one of the best understood of diseases.

The devastating ravages of sickle cell disease are not generally appreciated. This genetic affliction is cruel, crippling, lingering, and lethal.

It first manifests at about five to six months after birth because it is delayed in its clinical expression due to genetic switching mechanisms involving the production of incorrectly structured beta-S globin chains in the S hemoglobin molecule.

The clinical course is punctuated by agonizing episodes of bone-cracking pain and temperature elevations with anemia, listlessness, lethargy, infarcts of virtually all organs of the body including the spleen, bone, lung, and central nervous system.

Some victims are struck with blindness, aphasia, crippling, paralysis, and convulsions. Others have episodes of severe abdominal pain mimicking the acute surgical abdomen which can lead to unnecessary surgery and increased hazards of death under anesthesia. Clinical manifestations also include leg ulcers, jaundice, increased susceptibility to infection, and hyporegenerative bone marrow activity.

Sociologically, these victims are often poor students and poor workers, frequently unable to earn adequate incomes. They are hopelessly demoralized. Furthermore, they are impoverished by expensive hospitalizations of varying frequency.

Ultimately, they may become addicted to narcotics which are used by frustrated physicians as an act of therapeutic desperation

even though such treatment is known to be ineffective in eliminating the pain.

Finally, these victims die prematurely after years of suffering the blows of this crushing disease. What a staggering penalty to pay because of the genetic substitution of two amino acids among 574 per molecule of hemoglobin!

In 1949, Linus Pauling and associates¹ produced experimental proof and established sickle cell anemia as the first example of a molecular disease in which the molecular structural anomaly of hemoglobin was genetically controlled.

Three years later, Pauling predicted² that when the complete structure of the hemoglobin molecule would be discovered, such knowledge would permit the development of improved therapeutic methods. Pauling's prophecy has been fulfilled in less than 20 years!

A remarkable series of investigations dating from 1943 at the molecular level on hemoglobin culminated in 1966 by the brilliant, singular achievement of Dr. Makio Murayama at the National Institutes of Health when he published his hypothesis for the molecular mechanism of sickling in hemoglobin S.³

This astonishingly accurate hypothesis was evolved from his construction of a precision model of the hemoglobin molecule on a scale of 127 million to 1. Murayama has discussed in detail his recently, slightly modified concepts.⁴

We have extended the Murayama hypothesis by our inferences and our deductions. As a result we have developed a series of recent advances at the molecular level of reference.⁴

1) the development of three specific tests for S hemoglobin, each with a molecular basis;

2) a therapeutic strategy for the treatment of sickle cell crisis consisting of a chemical attack on the intertetrameric hydrophobic bonds responsible for the sickling event as specified by Murayama;

3) the theoretical and deductive specification of molecular properties for an ideal chemotherapeutic agent which antedated and led to the selection of urea;

4) the evolution of a clinical protocol for the intravenous use of urea in the treatment of acute sickle cell crisis,

5) the evolution of a clinical protocol for the oral use of urea in the prophylactic treatment of sickle cell anemia.

All of these discoveries are a direct consequence of the modified Murayama hypothesis and are a confirmation of the validity of his prescient molecular view of sickling since his hypothesis has proved so fruitful in the prediction of these discoveries. And so the Pauling prophecy of 1952 has been fulfilled precisely.

THE MURAYAMA TEST

Elsewhere,⁴⁻⁶ we have shown that all tests in use today in hospital laboratories to diagnose sickle cell hemoglobin are nonspecific. The Murayama test (named by us in recognition of his elucidation of the molecular mechanism of sickling) is a simple, visual method for the detection of the existence of the implicated hydrophobic bonds essential to the sickling event in concentrated, deoxygenated hemolysates when S hemoglobin is present.

The unique property of such hydrophobic bonds is that the intermolecular bonds weaken as 0° C. is approached. Hence, they have a "negative temperature coefficient of gelation." That is, such systems exhibit phase changes which are thermally dependent.

Footnotes at end of article.

Appropriately prepared hemolysates of S hemoglobin are thus a gel at 37° and a liquid at 0° and are reversibly so at the limits of this temperature range—just the opposite of jello!

The molecular specificity of this test is predicated on the submolecular pathology of amino acid substitutions in the beta-S globin chains of the hemoglobin S molecule.

We have correctly predicted from molecular structure the differential behavior of such non-S sickling hemoglobins as C (Hartem), I, and C (Georgetown) under conditions of the Murayama test.⁴ Details of data and techniques have been published elsewhere.⁴

DEDUCTIVE SELECTION OF UREA AS A CHEMOTHERAPEUTIC AGENT

As another extension of the Murayama hypothesis, we reasoned^{4,7} that mounting a chemical attack on the implicated hydrophobic bonds required an agent which among other specifications had the capacity to break hydrophobic bonds plus specific molecular structural features which have been detailed elsewhere. Such deductive specifications led to the selection and use of urea for this purpose.

Our initial experiments with one molar urea in aqueous solutions did reverse cells sickled by 2% Na₂S₂O₈ in the persistent presence of that reducing agent. Within a half hour, however, extensive evidence of hemolysis was observed. Shortly thereafter, we discovered that urea in sugar solutions (invert sugar or glucose) served as an effective and ideal desickling agent without producing any hemolysis.

Extensive optical and electron microscopic evidence of such desickling activity of urea has been provided by one of the members of our research team, Dr. Marion I. Barnhart, Professor of Physiology at Wayne State University in Detroit.^{4,7}

MODIFIED SICKLED TEST

The Sickled test was offered in 1968 as a "specific test for S hemoglobin" without benefit of disclosure of the principle of the test or description of the reagent.

In 1969, in the *Bulletin of Pathology*, we published our views that the Sickled test was, in fact, a derivation of the Itano solubility test published some 15 years earlier, and, in view of the present day knowledge of over 150 hemoglobinopathies, could not be considered to be specific any longer.

We regard the Sickled test as an excellent screening procedure. Hence, we knew that the principle of the test was, at essence, a measure of the solubility parameter of deoxygenated hemoglobins, the principle of the Itano solubility test.

We have discussed in detail elsewhere^{4,8} the fact that sickle cell hemoglobin tests predicated on solubility parameters alone are no longer valid since there are now known to be other hemoglobins which will give false tests under the specified conditions of the Sickled test. Among such false positive tests, we predicted that hemoglobin Bart's would so behave. This has been confirmed by experimental evidence.^{4,8}

In association with Henry and co-workers, we modified the Sickled test^{4,8} by the addition of urea to "positive" tests, reasoning that nonspecific nematic liquid crystal systems produced by one or another of a non-S sickling hemoglobins, would remain intact in the presence of urea, i.e., positive tests would remain positive in the presence of urea; whereas such liquid crystal systems mediated by hydrophobic bonds as in hemoglobin S would reverse in the presence of urea, i.e., positive tests would become negative in the presence of the hydrophobic-bond-destroying urea.

Details of data and techniques and a detailed discussion of principles and interpretation have been published elsewhere.^{4,8}

An automated version of our Sickledex modification has been adapted^{4,9} to a two-channel Auto-Analyzer so that one line carries an aliquot of blood in Sickledex solution and the other carries an aliquot of the same blood specimen in a urea-Sickledex solution. Under these conditions there is a distinct gain in percent transmittance of light in the urea-Sickledex channel, since the nematic liquid crystal system responsible for the turbidity (sickled S hemoglobin) is dispersed by the urea.

This automated system has recently been proven accurate and feasible in the mass screening of large human populations for the detection of S hemoglobin in extensive field studies conducted jointly with the U.S. Army Medical Research Laboratory at Fort Knox, Ky.

Because of the relatively high cost per determination of the proprietary Sickledex test, we have determined in our laboratory (BMH) that reagents prepared by us consisting of potassium phosphate, Na₂S₂O₈ (sodium dithionite), and saponin provide perfectly satisfactory working solutions in no detectable way inferior to the stock solutions vended by the developers. This confirms our 1969 assertion that the Sickledex test is derived from the Itano solubility test.

Furthermore, in studies currently underway in our laboratory, the cost of the test has been reduced from \$1.00 to 2½¢ per determination. Thus, for 2½¢ per test (reagent cost) on ½ cc. of EDTA-collected whole blood, automated determinations for the diagnosis of both sickle hemoglobin and non-S sickling hemoglobin have been conducted at the rate of 120 per hour.

The survey of large human populations in metropolitan areas for case finding of sickle cell disease leading both to medical genetic counseling and to treatment (see below) is now a proven technique. All that is required at present to make advances in diagnosis and treatment as well as accurate statistics in this area of human disease is interest and funding. Details of data and techniques are discussed elsewhere.^{4,9}

INTRAVENOUS UREA IN THE TREATMENT OF SICKLE CELL CRISIS

Explicit and detailed protocols for the intravenous use of urea in sugar solutions have been published.^{4,10} In every case of acute sickle cell crisis where the specific provisions of our published protocols have faithfully followed we have never had a therapeutic failure, a medical misadventure, or a death. Hence, explicit compliance with our protocols in the treatment of acute sickle cell crisis will result in safe, effective treatment of acute sickle cell crisis without the use of narcotics or analgesics.

We have completed our safety and feasibility studies and are currently entering a large series of controlled, randomized studies as the final phase of evaluation of our protocols. We have made these protocols available to interested investigators who wish to conduct independent controlled series of studies of their own. However, we urge faithful compliance with all provisions of our protocol in order to maintain safety and therapeutic effectiveness.

ORAL, PROPHYLACTIC TREATMENT OF SICKLE CELL ANEMIA

The therapeutic basis for oral prophylactic urea rests on the experimental demonstration in our laboratory^{4,10} that it takes less urea to block the sickling event in susceptible cells than it does to reverse sickling in aliquots of such cells. The theory for such therapeutic efficacy of low doses of oral urea has been discussed in extenso elsewhere.^{4,10}

The intravenous therapeutic modality for the termination of an acute sickle cell crisis is spectacular and impressive, but is rather expensive, requiring hospitalization, and,

most important, represents treatment after the vasculo-occlusive episodes and attendant tissue injury.

Since sickle cell disease injures tissue systems in episodic fashion by crisis, the use of oral urea is designed to mitigate and specifically to eliminate sickle cell crisis, correct the anemia by increasing the red blood cell survival time, relieving the enormous metabolic load on the bone marrow organ.

With our preliminary study in more than 80 cases of sickle cell disease managed on oral prophylactic urea, the therapeutic responses have been impressive to date. Also, details of cases of priapism, hematuria in heterozygotes, SC hemoglobinopathy in pregnancy, and near crisis-like states all responding to oral prophylactic urea are either in press at present or await completion of concurrent studies.

The advantages of the oral modality of treatment over the intravenous regimen are that it is simple, inexpensive, safe, avoids incremental tissue injuries, and restores the patient to productive activity. The promise of oral prophylactic urea for the homozygous S diseases victim is a productive, painfree, full life span—all for pennies a day since urea costs only \$1.00 per pound.

After an extensive study of our detailed research work on sickle cell anemia, Linus Pauling, twice Nobel Laureate, recently wrote: "Sickle cell anemia is the first disease to have become thoroughly understood, the first disease for which a clear and complete explanation of the manifestations could be formulated." He states¹ that our work has led to the development of a method "for controlling the crisis of the disease. Sickle cell anemia has thus become one of the first diseases for which there is a known molecular basis for pathogenesis, a molecular basis for diagnosis, and a molecular basis for treatment."

FOOTNOTES

¹ Pauling, L., et al.: Sickle Cell Anemia, a Molecular Disease, Science 110; 543-548, 1949.

² Pauling, L.: The Hemoglobin Molecule in Health and Disease, Proc. Amer. Philosoph. Soc. 96: 556-565, 1952.

³ Muryan, M.: Molecular Mechanics of Red Cell Sickling, Science 153: 145-149, 1966.

⁴ Nalbandian, R. M. (ed.): Molecular Aspects of Sickle Cell Hemoglobin; Clinical Applications, Springfield, Ill.: Charles C. Thomas, May 1971.

Author's Note: The next six listed U.S. Army Medical Research Laboratory Reports, numbers 893-898, are available from The Defense Documentation Center, Cameron Station, Virginia 22314, or from The Clearing House for Federal, Scientific, and Technical Information, Department of Commerce, Washington, D.C. 20310.

⁵ Nalbandian, R. M., et al.: The Murayama Test: Part I. Evidence for the Modified Murayama Hypothesis for the Molecular Mechanism of Sickling, report 894, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

⁶ Nalbandian, R. M., et al.: The Murayama Test: Part II. Principles, Techniques, Interpretation, and Data, report 894, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

⁷ Nalbandian, R. M., et al.: Sickling Reversed and Blocked by Urea in Invert Sugar: Optical and Electron Microscopy Evidence, report 895, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

⁸ Henry, R. L., et al.: Modified Sickledex Tube Test: A Specific Test for S Hemoglobin, report 897, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

⁹ Henry, R. L., et al.: An Automated Screening Method for the Specific Detection of Homozygous and Heterozygous S Hemoglobin, report 898, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

¹⁰ Nalbandian, R. M., et al.: Sickle Cell Crisis Terminated by Use of Urea in Invert

Sugar in Two Cases, report 896, U.S. Army Medical Research Laboratory, Sept. 17, 1970.

Mr. ROGERS. Mr. Chairman, I move to strike out the last word.

Mr. O'KONSKI. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Eighty-nine Members are present, not a quorum. The Clerk will call the roll.

The Clerk called the roll and the following Members failed to answer to their names:

[Roll No. 86]

Abourezk	Harvey	Reid
Baring	Hébert	Rosenthal
Belcher	Hicks, Wash.	Rostenkowski
Bow	Hull	Saylor
Clark	Johnson, Pa.	Scheuer
Clay	Jonas	Seiberling
Collins, Ill.	Jones, Ala.	Shoup
Conyers	Karth	Sisk
Dingell	Melcher	Stanton
Dowdy	Metcalfe	James V.
Dwyer	Mikva	Steiger, Wis.
Edwards, La.	Minish	Stubblefield
Eshleman	Morse	Teague, Tex.
Fuqua	Obeys	Thompson, N.J.
Galifianakis	O'Hara	Udall
Gaydos	Passman	Wilson
Gibbons	Patman	Charles H.
Gubser	Pryor, Ark.	Wright
Halpern	Rangel	Yates
Harsha	Rees	

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. EVINS of Tennessee, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill H.R. 13592, and finding itself without a quorum, he had directed the roll to be called, when 374 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. When the point of order of no quorum was raised, the gentleman from Florida (Mr. ROGERS) had been recognized.

The Chair recognizes the gentleman from Florida.

Mr. ROGERS of Florida. Mr. Chairman, I would urge the passage of this bill.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. EVINS of Tennessee, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 13592) to amend the Public Health Service Act to provide for the prevention of sickle cell anemia, pursuant to House Resolution 904, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. GERALD R. FORD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 392, nays 0, not voting 39, as follows:

[Roll No. 87]

YEAS—392

Abbutt	Davis, Ga.	Hogan
Abernethy	Davis, S.C.	Hollifield
Abourezk	Davis, Wis.	Horton
Abzug	de la Garza	Hosmer
Adams	Delaney	Howard
Addabbo	Dellenback	Hungate
Alexander	Dellums	Hunt
Anderson	Denholm	Hutchinson
Calif.	Dennis	Ichord
Anderson, Ill.	Dent	Jacobs
Anderson, Tenn.	Derwinski	Jarman
Andrews	Devine	Johnson, Calif.
Annunzio	Dickinson	Jonas
Archer	Diggs	Jones, Ala.
Arends	Dingell	Jones, N.C.
Ashbrook	Donohue	Jones, Tenn.
Ashley	Dorn	Karth
Aspin	Dow	Kastenmeier
Aspinall	Downing	Kazen
Badillo	Drinan	Keating
Baker	Dulski	Kee
Barrett	Duncan	Keith
Begich	du Pont	Kemp
Bell	Eckhardt	King
Bennett	Edmondson	Kluczynski
Bergland	Edwards, Ala.	Koch
Betts	Edwards, Calif.	Kuykendall
Bevill	Ellberg	Kyl
Biaggi	Erlenborn	Kyros
Blester	Esch	Landgrebe
Bingham	Evans, Colo.	Landrum
Blackburn	Evins, Tenn.	Latta
Blanton	Fascell	Leggett
Blatnik	Findley	Lennon
Boggs	Fish	Lent
Boland	Fisher	Link
Bolling	Flood	Lloyd
Bow	Flowers	Long, La.
Brademas	Flynt	Long, Md.
Brasco	Foley	Lujan
Bray	Ford, Gerald R.	McClory
Brinkley	Ford, William D.	McCloskey
Brooks	Forsythe	McClure
Broomfield	Fountain	McCollister
Brotzman	Fraser	McCormack
Brown, Mich.	Frelinghuysen	McCulloch
Brown, Ohio	Frenzel	McDade
Broyhill, N.C.	Frey	McDonald
Broyhill, Va.	Fulton	Mich.
Buchanan	Gallagher	McEwen
Burke, Fla.	Garmatz	McFall
Burke, Mass.	Gettys	McKay
Burleson, Tex.	Gialmo	McKevitt
Burlison, Mo.	Gibbons	McKinney
Burton	Goldwater	McMillan
Byrne, Pa.	Gonzalez	Macdonald
Byrnes, Wis.	Goodling	Mass.
Byron	Grasso	Madden
Cabell	Gray	Mahon
Caffery	Green, Oreg.	Mailliard
Camp	Green, Pa.	Mallory
Carey, N.Y.	Griffin	Mann
Carney	Griffiths	Martin
Carter	Gross	Mathias, Calif.
Casey, Tex.	Grover	Mathis, Ga.
Cederberg	Gubser	Matsunaga
Celler	Gude	Mayne
Chappell	Hagan	Mazzoli
Chisholm	Haley	Meeds
Clancy	Hall	Melcher
Clark	Hamilton	Michel
Clausen	Hammer	Miller, Calif.
Don H.	schmidt	Miller, Ohio
Clawson, Del.	Hanley	Mills, Ark.
Clay	Hanna	Mills, Md.
Cleveland	Hansen, Idaho	Mink
Collier	Hansen, Wash.	Minshall
Collins, Tex.	Harrington	Mitchell
Colmer	Hastings	Mizell
Conable	Hathaway	Mollohan
Conte	Hawkins	Monagan
Corman	Hays	Montgomery
Cotter	Hechler, W. Va.	Moorhead
Coughlin	Heckler, Mass.	Morgan
Crane	Heinz	Morse
Culver	Helstoski	Mosher
Curlin	Henderson	Moss
Daniel, Va.	Hicks, Mass.	Murphy, Ill.
Daniels, N.J.	Hicks, Wash.	Murphy, N.Y.
Danielson	Hillis	Myers
		Natcher

Nedzi	Roush	Taylor
Neisen	Rousselot	Teague, Calif.
Nichols	Roy	Terry
Nix	Roybal	Thompson, Ga.
O'Konski	Runnels	Thompson, N.J.
O'Neill	Ruppe	Thomson, Wis.
Passman	Ruth	Thone
Patman	Ryan	Tiernan
Patten	St Germain	Ullman
Pelly	Sandman	Van Deerlin
Pepper	Sarbanes	Vander Jagt
Perkins	Satterfield	Vanik
Pettis	Scherle	Veysey
Peyser	Schmitz	Vigorito
Pickle	Schneebeli	Waggonner
Pike	Schwengel	Waldie
Pirnie	Scott	Wampler
Poage	Sebelius	Ware
Podell	Seiberling	Whalen
Poff	Shipley	Whalley
Poyer, N.C.	Shriver	White
Price, Ill.	Sikes	Whitehurst
Price, Tex.	Skubitz	Whitten
Pucinski	Slack	Widnall
Purcell	Smith, Calif.	Wiggins
Quile	Smith, Iowa	Williams
Quillen	Smith, N.Y.	Wilson, Bob
Rallsback	Snyder	Wilson,
Randall	Spence	Charles H.
Rarick	Springer	Winn
Reuss	Staggers	Wolf
Rhodes	Stanton	Wright
Riegle	J. William	Wyatt
Roberts	Steed	Wyder
Robinson, Va.	Steele	Wylie
Robison, N.Y.	Steiger, Ariz.	Wyman
Rodino	Stevens	Yatron
Roe	Stokes	Young, Fla.
Rogers	Stratton	Young, Tex.
Roncalio	Stuckey	Zablocki
Rooney, N.Y.	Sullivan	Zion
Rooney, Pa.	Symington	Zwach
Rosenthal	Talcott	

NAYS—0

NOT VOTING—39

Baring	Harvey	Rostenkowski
Belcher	Hébert	Saylor
Chamberlain	Hull	Scheuer
Collins, Ill.	Johnson, Pa.	Shoup
Conyers	Metcalfe	Sisk
Dowdy	Mikva	Stanton
Dwyer	Minish	James V.
Edwards, La.	Obeys	Steiger, Wis.
Eshleman	O'Hara	Stubblefield
Fuqua	Powell	Teague, Tex.
Galifianakis	Pryor, Ark.	Udall
Gaydos	Rangel	Yates
Halpern	Rees	
Harsha	Reid	

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Belcher.
Mr. Rostenkowski with Mr. Shoup.
Mr. Mikva with Mr. Johnson of Pennsylvania.
Mr. James V. Stanton with Mr. Halpern.
Mr. Rees with Mr. Harvey.
Mr. O'Hara with Mr. Saylor.
Mr. Minish with Mr. Powell.
Mr. Sisk with Mrs. Dwyer.
Mr. Teague of Texas with Mr. Eshleman.
Mr. Stubblefield with Mr. Harsha.
Mr. Hull with Mr. Chamberlain.
Mr. Fuqua with Mr. Reid.
Mr. Udall with Mr. Steiger of Wisconsin.
Mr. Metcalfe with Mr. Dowdy.
Mr. Baring with Mr. Galifianakis.
Mr. Rangel with Mr. Gaydos.
Mr. Conyers with Mr. Scheuer.
Mr. Yates with Mr. Pryor of Arkansas.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce be discharged from the further consideration of the Senate bill S. 2676, a similar bill to H.R. 13592, just passed by the House, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2676

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act shall be cited as the "National Sickle Cell Anemia Control Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds and declares—

(1) that sickle cell anemia is a debilitating, inheritable disease that afflicts approximately two million American citizens and has been largely neglected;

(2) that the disease is a deadly and tragic burden which is likely to strike one-fourth of the children born to parents, both of whom bear the sickle cell trait;

(3) that efforts to control sickle cell anemia must be directed toward increased research in the cause and treatment of the disease, and the education, screening, and counseling of carriers of the sickle cell trait;

(4) that simple and inexpensive screening tests have been devised which will identify those who have the disease or carry the trait;

(5) that programs to control sickle cell anemia must be based entirely upon the voluntary cooperation of the individuals involved;

(6) that the attainment of better methods of control, diagnosis, and treatment of sickle cell anemia deserves the highest priority.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the control, research, and treatment of sickle cell anemia.

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I to XI".

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), and references thereto, as sections 1201 through 1214, respectively.

(c) The Public Health Service Act is further amended by adding after title X the following new title:

"TITLE XI—SICKLE CELL ANEMIA PROGRAM"

"GRANTS FOR SICKLE CELL SCREENING AND COUNSELING PROGRAMS"

"SEC. 1101. (a) The Secretary is authorized to make grants to and enter into contracts with public and nonprofit private agencies, organizations, or institutions to assist in the establishment and operation of voluntary sickle cell anemia screening and counseling programs and to assist in developing and making available information and educational materials relating to sickle cell anemia to all persons requesting such information or materials, and to inform the public generally about the nature of sickle cell anemia and the sickle cell trait.

"(b) In making grants and contracts under this section the Secretary shall give priority to areas within States having the highest percentage of population in need of sickle cell anemia screening and counseling programs; with a further priority to community-based organizations in such areas.

"(c) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1973; \$35,000,000 for the fiscal year ending June 30, 1974; and \$40,000,000 for the fiscal year ending June 30, 1975.

"RESEARCH AND RESEARCH TRAINING GRANTS"

"SEC. 1102. (a) In order to promote research and research training in the diagnosis, treatment, and control of sickle cell anemia, development of programs to educate the public regarding the nature and inheritance of the sickle cell trait and sickle cell anemia, and the development of centers for research, testing, counseling, control or treatment of sickle cell anemia, the Secretary is authorized to make grants to public or nonprofit private agencies, organizations, or institutions and to enter into contracts with public or private agencies, organizations, or institutions and individuals for projects for research and research training in such fields.

"(b) For the purpose of making payments pursuant to grants and contracts under this section there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1973; \$10,000,000 for the fiscal year ending June 30, 1974; and \$15,000,000 for the fiscal year ending June 30, 1975.

"VOLUNTARY PARTICIPATION"

"SEC. 1103. The participation by any individual in any program or portion thereof under this title (whether by grant or contract) shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from or to participation in, any other program.

"APPLICATIONS"

"SEC. 1104. A grant under this title may be made upon application to the Secretary at such time, in such manner, containing, and accompanied by such information as the Secretary deems necessary. Each application shall—

"(1) provide that the programs and activities for which assistance under this title is sought will be administered by or under the supervision of the applicant;

"(2) provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) consents to be released; or (B) statistical data compiled without reference to the identity of any such patient;

"(3) provide for appropriate community representation in the development and operation of any program funded under this title; and

"(4) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title.

"PUBLIC HEALTH SERVICE FACILITIES"

"SEC. 1105. The Secretary shall establish a program within the Public Health Service to provide for voluntary sickle cell anemia screening, counseling, and treatment. Such program shall be made available through facilities of the Public Health Service to any eligible person requesting screening, counseling, or treatment, and shall include notification of all eligible persons of the availability and voluntary nature of such programs.

"REPORTS"

"SEC. 1106. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this title.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary."

PROTECTION OF ARMED FORCES PERSONNEL

SEC. 4. (a) The Secretary of Defense is authorized and directed to promulgate rules and regulations to provide for screening and counseling of members of the Armed Forces (including their dependents), civilian employees of the Department of Defense, and persons examined at Armed Forces examining and entrance stations, for the sickle cell trait and sickle cell anemia.

(b) Such rules and regulations shall provide for—

(1) voluntary screening for the sickle cell trait for persons described in subsection (a) who request such a test, at no cost to such person;

(2) communication to such person described in subsection (a) of the results of such test;

(3) voluntary referral of individuals determined to possess a positive trait to an appropriate military or civilian counseling or treatment agency;

(4) notification to persons described in subsection (a) of the cost-free and voluntary nature of the screening and referral programs implemented pursuant to this section;

(5) education of persons described in subsection (a) regarding the nature and inheritance of the sickle cell trait and sickle cell anemia; and

(6) assurance that all information obtained on specimens submitted voluntarily under this Act shall be held confidential except for (A) such information as the patient (or his guardian) consents to be released or (B) statistical data compiled without reference to the identity of such patient.

(c) The Secretary of Defense shall provide for voluntary counseling or treatment of such persons described in subsection (a) found to have the sickle cell trait or sickle cell anemia at an appropriate military or civilian facility as the case may be.

(d) (1) The Secretary of Defense shall prepare and submit to the President for transmittal to Congress on or before April 1 of each year a comprehensive report on the administration of this section.

(2) The report required by this subsection shall contain such recommendations for additional legislation as the Secretary of Defense deems necessary.

(e) The participation by any individual in any program or portion thereof under this section shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

PROTECTION OF VETERANS

SEC. 5 (a) Chapter 17 of title 38, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter VI—Sickle Cell Anemia"

"§ 651. Screening, counseling, and medical treatment

"(a) The Administrator is authorized to offer to any veteran who is receiving hospital or domiciliary care or medical services under this chapter or is receiving an examination to determine eligibility for benefits under this title, a screening examination for sickle cell trait or sickle cell anemia, including providing to such veteran full information regarding the nature and inheritance of sickle cell trait and sickle cell anemia and regarding the availability to such veteran of a screening examination under this subchapter, and to provide such a screening examination upon such veteran's request.

"(b) Upon a finding that such veteran has the sickle cell trait or sickle cell anemia, the Administrator is authorized to offer, and, if such veteran requests, provide for counseling (which shall include such a screening examination and counseling for the veteran's spouse, when requested, and a complete explanation of the veteran's eligibility for hos-

pital care and medical services under this chapter) and/or necessary hospital care and medical services for a disability arising from such trait or anemia.

"(c) The Administrator shall ensure that each veteran receiving benefits under laws administered by the Veterans' Administration receives, as soon as practicable after enactment of this subchapter, full information regarding the nature and inheritance of sickle cell trait and sickle cell anemia and the availability of screening examinations and treatment for such trait and anemia.

"§ 652. Research

"The Administrator shall carry out research and research training in the diagnosis, treatment, and control of sickle cell anemia based upon the screening examinations and treatment provided under this subchapter, subject to the provisions governing voluntary participation and confidentiality in section 653 of this title. For the purpose of carrying out such research, there are authorized to be appropriated \$3,000,000 for the fiscal year ending June 30, 1973; \$4,000,000 for the fiscal year ending June 30, 1974; and \$5,000,000 for the fiscal year ending June 30, 1975.

"§ 653. Voluntary participation; confidentiality

"(a) The participation by any person in any program or portion thereof under this subchapter shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program under this title.

"(b) The Administrator shall promulgate rules and regulations to ensure that all information and patient records prepared or obtained under this subchapter shall be held confidential except for (1) such information as the patient (or his guardian) requests in writing to be released or (2) statistical data compiled without reference to patient names or other identifying characteristics.

"§ 654. Reports

"(a) The Administrator shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this subchapter.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Administrator deems necessary."

"(b) The analysis at the beginning of such chapter is amended by adding at the end thereof:

"SUBCHAPTER VI—SICKLE CELL ANEMIA

"651. Screening, counseling, and medical treatment.

"652. Research.

"653. Voluntary participation; confidentiality.

"654. Reports."

MOTION OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STAGGERS moves to strike out all after the enacting clause of the bill S. 2676, and insert in lieu thereof the provisions of H.R. 13592, as passed, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "National Sickle Cell Anemia Prevention Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds and declares—

(1) that sickle cell anemia is a debilitating, inheritable disease that afflicts approximately two million American citizens and has been largely neglected;

(2) that the disease is a deadly and tragic burden which is likely to strike one-fourth of the children born to parents who both bear the sickle cell trait;

(3) that efforts to prevent sickle cell anemia must be directed toward increased research in the cause and treatment of the disease, and the education, screening, and counseling of carriers of the sickle cell trait;

(4) that simple and inexpensive screening tests have been devised which will identify those who have the disease or carry the trait;

(5) that programs to prevent sickle cell anemia must be based entirely upon the voluntary cooperation of the individuals involved; and

(6) that the attainment of better methods of prevention, diagnosis, and treatment of sickle cell anemia deserves the highest priority.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the diagnosis, prevention, and treatment of, and research in, sickle cell anemia.

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I to XI".

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), and references thereto, as sections 1201 through 1214, respectively.

(c) The Public Health Service Act is further amended by adding after title X the following new title:

"TITLE XI—SICKLE CELL ANEMIA PROGRAM

"SICKLE CELL ANEMIA SCREENING AND COUNSELING PROGRAMS AND INFORMATION AND EDUCATION PROGRAMS

"SEC. 1101. (a) (1) The Secretary may make grants to public and nonprofit private entities, an may enter into contracts with public and private entities, for projects for the establishment and operation of voluntary sickle cell anemia screening and counseling programs as part of other existing public health care programs.

"(2) The Secretary shall carry out a program to develop information and educational materials relating to sickle cell anemia and to disseminate such information and materials to persons providing health care and to the public generally. The Secretary may carry out such program through grants to public and nonprofit private entities or contracts with public and private entities and individuals.

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated \$20,000,000 for the fiscal year ending June 30, 1973, \$25,000,000 for the fiscal year ending June 30, 1974, and \$30,000,000 for the fiscal year ending June 30, 1975.

"PROJECT GRANTS AND CONTRACTS FOR RESEARCH AND PROGRAMS FOR DIAGNOSIS, PREVENTION, AND TREATMENT

"SEC. 1102. (a) The Secretary may make grants to public and nonprofit private entities; and may enter into contracts with public and private entities and individuals, for projects for (1) research in the diagnosis, treatment, and prevention of sickle cell anemia, and (2) the development of programs for diagnosis, prevention, and treatment of sickle cell anemia.

"(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1973, \$10,000,000 for the fiscal year ending June 30, 1974, and \$15,000,000 for the fiscal year ending June 30, 1975.

"VOLUNTARY PARTICIPATION

"SEC. 1103. The participation by any individual in any program or portion thereof under this title shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

"APPLICATIONS; ADMINISTRATION OF GRANT AND CONTRACT PROGRAMS

"SEC. 1104. (a) A grant under this title may be made upon application to the Secretary at such time, in such manner, containing and accompanied by such information, as the Secretary deems necessary. Each applicant shall—

"(1) provide that the programs and activities for which assistance under this title is sought will be administered by or under the supervision of the applicant;

"(2) describe with particularity the programs and activities for which assistance is sought;

"(3) provide for strict confidentiality of all test results, medical records, and other information regarding screening, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) consents to be released; or (B) statistical data compiled without reference to the identity of any such patient;

"(4) provide for appropriate community representation in the development and operation of any program funded by a grant under this title;

"(5) in the case of an application for a grant under section 1101(a) (1), provide assurances satisfactory to the Secretary that (A) the screening and counseling services to be provided under the program for which the application is made will be directed first to those persons who are entering their child-bearing years and secondly to children under the age of 7, and (B) appropriate arrangements have been made to provide counseling to persons found to have sickle cell anemia or the sickle cell trait;

"(6) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

"(7) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

"(b) In making any grant or contract under the title, the Secretary shall (1) take into account the number of persons to be served by the program supported by such grant or contract and the extent to which rapid and effective use will be made of funds under the grant or contract; and (2) give priority to programs operating in areas which the Secretary determines have the greatest number of persons in need of the services provided under such programs.

"PUBLIC HEALTH SERVICE FACILITIES

"SEC. 1105. The Secretary shall establish a program within the Public Health Service to provide for voluntary sickle cell anemia screening, counseling, and treatment. Such program shall be made available through facilities of the Public Health Service to any person requesting screening, counseling, or treatment, and shall include appropriate publicity of the availability and voluntary nature of such programs.

"REPORTS

"SEC. 1106. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on or before April 1 of each year a comprehensive report on the administration of this title.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary."

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "To amend the Public Health Service Act to provide for the prevention of sickle cell anemia."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 13592) was laid on the table.

GENERAL LEAVE

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their own remarks on the bill just passed, and to include extraneous material.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

PROTEST AGAINST \$2.1 BILLION FOREIGN MILITARY ASSISTANCE REQUEST

(Mr. ROUSH asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ROUSH. Mr. Speaker, I rise today to add my vote of protest against congressional approval of the \$2.1 billion foreign military assistance request for fiscal 1973 which the administration has placed before this Congress.

My protest is based on several grounds.

First and foremost is the fact that this country is already short on money for the everyday needs of the American people. In the name of prudent management and stemming inflation the Office of Management and Budget has callously impounded, reserved, and refused to spend the funds Congress appropriated for educational, housing, transportation, environmental programs. How can we then possibly justify spending over \$2 billion for foreign military aid with the hope of some vague, long-term, highly questionable goals when we cannot manage to apply the American taxpayer's dollar to the immediate and critical needs here at home?

My second grounds for protest rests on those goals themselves and what the American people will buy or secure for that \$2 billion. I seem to remember that our first involvement in Southeast Asia was in the form of military equipment. Do we want that? Do we even want intensified involvement in the military planning of other nations? Does that purchase security for us at home?

I think not. Actually at the worst we may wish that \$2 billion purchase another war for ourselves because where our arms go, there also go our political and economic interests. And even if we do not become directly involved in a war, acting in the role of an arms supplier we thereby provoke innumerable conflicts between rival nations. Without our prized military assistance these nations could not so easily and precipitously engage in fighting wars among themselves.

Finally, Mr. Speaker, the Congress ex-

pressed its intent regarding foreign military assistance in extended argument and debate last year, finally completing this discussion a short time ago. I believe that lengthy consideration reflected attention to the increased complaints of the American people about this kind of spending and the effort to reconsider some of our priorities. I do not believe that we should allow that healthy reappraisal to be frustrated by restoring those funds for fiscal 1973.

COMPENSATION TO THE NAVAJO TRIBE FOR RECREATIONAL USE OF FORMER RESERVATION LANDS AT GLEN CANYON

(Mr. SKUBITZ asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. SKUBITZ. Mr. Speaker, I am introducing for myself, Mr. SAYLOR, Mr. UDALL, Mr. STEIGER of Arizona, Mr. LLOYD, and Mr. MCKAY, a bill to authorize the Secretary of the Interior to transfer franchise fees received from certain concession operations at Glen Canyon Recreation Area, Ariz., and for other purposes.

This proposal is the result of Executive Communication No. 1685 and is a step towards fulfillment of an agreement with the Navajo Tribe for the use of their former reservation lands transferred for recreational use at the Glen Canyon Recreation Area. This bill directs that the Secretary place the annual franchise fee received from the Park Service-concessioner-operated Rainbow Bridge floating marina facility at Lake Powell into a separate fund of the Treasury and to transfer that fee to the Navajo Indian Tribe in consideration of the tribe's continued agreement to the use of their former reservation lands for recreation purposes. Compensation is intended to commence after passage of the legislation and is intended to be the sole compensation for any claim the tribe may have for past compensation for the use of their lands at Rainbow Bridge.

The Navajo Tribal Council has approved the use of the former reservation lands for this purpose. The tribe's approval, however, and its agreement to any recreational use of former reservation land within the recreation area, as well as cooperative development of contiguous tribal lands, is contingent upon the transfer of the annual franchise fee as provided in this proposal.

Although there are no other situations wherein franchise fees are transferred by the National Park Service to an Indian tribe, there are two areas of the National Park System involving similar circumstances. At Bighorn Canyon National Recreation Area, Mont., the Crow Indian Tribe of Montana is given a preferential right to construct and operate revenue-producing facilities on certain Federal lands, and to retain any resulting revenues. At Canyon de Chelly National Monument, Ariz., located entirely on Indian lands within the Navajo Indian Reservation, the concessioner pays an annual franchise fee directly to the tribe.

The text of the bill is:

H.R. 14029

A bill to authorize the Secretary of the Interior to transfer franchise fees received from certain concession operations at Glen Canyon Recreation Area, Arizona, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of law requiring such fees to be credited to miscellaneous receipts in the Treasury of the United States, there shall be placed in a separate fund in the Treasury of the United States the annual franchise fee received by the Secretary of the Interior from concessioner-operated facilities at the Rainbow Bridge floating complex in Forbidden Canyon, within the Glen Canyon Recreation Area, Arizona, and the Secretary of the Interior is authorized to transfer such fees annually from said fund to the Navajo Tribe of Indians in consideration of continued agreement by the tribe to the use of lands transferred to the United States from the Navajo Indian Reservation for the purpose of anchoring such facilities.

H.R. 13832, LIQUEFIED NATURAL GAS SHIPS AND FACILITIES—A MATTER OF HIGH NATIONAL PRIORITY

(Mr. ANDERSON of Tennessee asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ANDERSON of Tennessee. Mr. Speaker, on March 15, I introduced legislation which would authorize the U.S. Government to negotiate the construction, outfitting and equipping of 40 ships for the purpose of transporting liquefied natural gas. The delivery date for these ships would be no later than January 1, 1980.

The purpose of this bill is to meet an impending energy crisis which, from all indications, the United States will experience by the year 1985. A reprint of the bill follows the text of this statement.

Another aim of this legislation is to establish a new national energy policy which would insure adequate energy to meet the projected needs of our domestic and industrial economy during the next decade.

There are several additional goals. One relates to atmospheric pollution. Natural gas burns almost pollution free. Then, conservation. Vast quantities of natural gas are still being flared to the atmosphere at wellheads throughout the world. This is a shameful waste, particularly when we consider the well-being of future generations.

I am fully aware of the complexities and difficulties of trying to look and plan ahead on matters of public needs. However, we must begin planning for the next decade before a growing energy crisis becomes a national catastrophe.

Authorities estimate that at the present rate of energy consumption in the United States, combined with a continuing decrease in domestic supply of energy sources, by 1985, we will be required to import over 40 percent of all forms of energy consumed. This will include the importation of approximately 15 million barrels of oil per day and 12 trillion cubic feet of natural gas per year. We are currently importing 3.4 million barrels of

oil per day and it is anticipated that the growth rate of oil imports will be 300 to 400 percent during the next 15 years.

A massive cutback in the anticipated growth rate of energy consumption is not the solution if we are to survive and compete effectively as an industrial nation and support a relatively high standard of living, though certainly we must pay strong attention to conservation of energy resources.

The primary sources of energy in the foreseeable future will continue to be oil and gas. Coal and nuclear power will continue to provide substantial inputs, but even with the coal industry doubling its output and nuclear plants increasing their megawatt yield 80 times, these sources will provide only 37 percent of our national needs in 1985.

In addition, all the nonconventional sources combined, such as hydroelectric, geothermal, tidal, and solar power, will provide less than 3 percent of our total energy needs in 1985.

The remainder of our energy needs, estimated to be 60 percent of the total, will be supplied from petroleum and natural gas.

If oil imports grow at the currently projected rates, in 1985 our oil needs will require between 300 and 350 oil tankers of 250,000 deadweight tons in service. The United States has no harbor capable of accommodating this size tanker.

Should an energy crisis come to the United States today, it is anticipated that we could meet and accommodate our energy needs for about 1 year at the most.

To meet such a crisis would mean relaxing air pollution standards so that high sulfur fuels could be consumed along the east coast and particularly in the energy deprived Northeastern sector of the country. It would mean increasing domestic oil production, depleting on-hand reserve stocks and production from uneconomical wells. Even with these "emergency" measures we may be able to stand off the crisis for only about 17 months.

Mr. Speaker, we must direct our efforts toward a new national energy policy and we must look for new sources of energy which will most effectively meet the impending crisis.

I believe liquefied natural gas is that source. The ships and facilities will be costly. I estimate we are talking about a public commitment of at least \$3 billion and a private commitment of \$12 billion for a total of \$15 billion. But these ships must be built in U.S. yards and they must be manned by U.S. crews. The potential is for at least 75,000 new jobs. To let the ships be built abroad, the LNG market commandeered by other nations, will not only wipe out that job potential, but place us as captives in the LNG marketplace. Other countries can charge whatever they want and cut off our supply at the slightest whim.

The use of LNG is not a new theory since we are already importing quantities of it to meet peak winter demands in the cold Northeast. But, if we are already using this form of energy producing fuel, and we know how to produce it, why do we face an energy crisis? The problem

is in transporting the gas. The United States currently has no ships capable of carrying LNG and the future will determine that the country with the transporting capability will control the market of this vital energy form.

Ten points can be made which give credence to the need for more U.S. participation in the LNG field:

First. Presently, the public and industrial demand for LNG is growing at the rate of 3.4 percent per year while discoveries of new domestic gas reserves are declining.

Second. If the present trend continues, the United States will face a shortage of 20 trillion cubic feet of gas per year by 1985. And, if automobiles were to convert to LNG, which can be easily accomplished, the LNG requirement in this country would increase by 35 percent.

Third. At the same time the role of LNG on the world energy market is rapidly expanding with the United States being the largest user, consuming more than two-thirds of the world's supply.

Fourth. By contrast, the Soviet Union currently consumes 20 percent of the world's total supply of LNG and Western Europe about 5 percent. But Western Europe may soon increase their gas usage to approximately 10 percent as pipeline networks from the U.S.S.R. and the Netherlands are completed.

Fifth. Those countries now planning to increase LNG imports include France, Italy, Spain, Japan, as well as the United States.

Sixth. Thus far, the United States LNG efforts have been directed principally toward storage sites and highway-based semitrailers, 50 of which have been built and are operating mostly in New England and California.

Seventh. U.S. consumers along the east coast have been importing LNG from overseas via foreign-flag ships to meet the needs of the winter months. Our role in the transportation of this gas is virtually nil.

Eighth. Six Western European nations and Japan are leading the international field in LNG ship interest and construction. Today there are 13 LNG ships in service and 20 more on order.

Ninth. The closest the United States has come to operating a liquid natural gas carrier is the *Marine Eagle*, a converted T-2, which is being used as an ammonia carrier along the east coast.

Tenth. The United States, with its highly developed space technology, is fully capable, more so than any other country, of leading the world in the construction of LNG ships and facilities.

All of our space flights have utilized liquefied gasses. Various kinds of metals have been proven; pumps, compressors, insulation and refrigeration techniques have been tested and used in orbital and lunar missions.

We have the experience, capability, and knowledge to move ahead in this field if we put our space and ship technology to work together.

Since the famous New York blackout in October 1965, there have been literally hundreds of other power shortages and failures across the United States. In my own Tennessee Valley country we have

seen the reserve coal supply dwindle from 60 days to as few as 1½ days. We are being warned and alerted that new directions must be taken to insure ample energy in the future.

The bill which I have introduced is but the first step in assuring that our future energy needs will be met. At a later date I plan to offer legislation for the construction of additional shore-based and off-shore LNG facilities. Meanwhile, it is important that we not delay the ship construction program which would mean a great deal to our country in terms of meeting the energy crisis, the unemployment problem, and providing a much needed stimulant to the entire maritime industry.

U.S.-owned and operated LNG ships are obviously in the national interest. The country which owns and operates these ships will have a profitable business and obviously will exercise control over the world's supply of LNG reserves.

We need these ships. Vast amounts of proven and unproven reserves are constantly being discovered in Alaska and in several nations overseas. To allow another nation to take the lead and monopolize the LNG transporting market would be detrimental not only to our economic interests but could lead to international politics depriving us of vital energy sources during some future international crisis.

Regulations and policies of the past will no longer suffice.

We cannot afford to follow our present shortsighted policy with respect to energy development and consumption. If we do, we will have the sorry task of telling the Nation, "Sorry, out of gas." It is imperative that we move aggressively and immediately into the LNG shipbuilding field. From time to time I will have additional comments regarding the ships and other parts of the system.

Mr. Speaker, in conclusion, I include in the Record a copy of a letter sent to the President by the Commission on American Shipbuilding urging a program of mass production of LNG carriers:

DEAR MR. PRESIDENT: In accordance with the mission of the Commission on American Shipbuilding, defined in Public Law 91-469, the undersigned members of the Commission, since their appointment by you in January 1971, have been actively "reviewing the status of the American Shipbuilding industry, its problems and its progress toward increasing its productivity and reducing production costs."

The Commission's activities have included visits to shipyards in the United States, Europe, and Japan as well as inspections of specialized operations related to shipbuilding activities. In addition, both collectively and individually, we have consulted with a substantial number of national and international shipbuilding experts.

The Commission plans to submit a final detailed report of its findings and recommendations, as directed, prior to October 21, 1973. However, certain developments, which are currently accelerating, appear to make an interim report a matter of some urgency. These developments relate to a unique opportunity now available to the U.S. shipbuilding industry which, if not promptly supported by the coordinated actions of certain agencies of the U.S. Government, may be irrevocably lost to foreign competition. A potential multi-billion dollar U.S.

market over ten years is involved. The immediate, favorable impact on U.S. employment and trade balances would substantially support the goals established by your Administration. This Commission feels, as a result of its assessments to date, that this market can be developed by U.S. shipbuilders if, but only if, the Administration takes the initiative in coordinating and supporting this program.

Before specifically discussing this emerging multi-billion dollar market for U.S. manpower and materials, it may be appropriate to summarize certain interim findings of the Commission which relate to the foregoing.

First, we find it has been clearly demonstrated that, with the enactment of the Merchant Marine Act of 1970 under your sponsorship, many United States shipyards, with the market opportunities implicit in that statute, have already undertaken considerable investment in capital improvements and new facilities.

Second, we find that, even though the volume of construction of a series of standard ships under multiple-ship contracts has been only partially started, the United States shipyards are definitely prepared to make significantly larger modernization investments when the shipbuilding volume so warrants.

Third, we are encouraged that to date the shipbuilding industry is meeting the required milestones for declining subsidy support; in fact, in several recently awarded contracts, the construction differential subsidy goals have been exceeded.

We should now like to refer to the specific market opportunity mentioned earlier. This is the market for liquefied natural gas (LNG) tankers. To meet the energy shortages which will occur around the world, and particularly in this country, in increasing degrees of severity, and to meet the environmental criteria for providing this energy, we believe it will be necessary to move vast tonnages of LNG from the gas fields of the world to the United States, northern Europe, and Japan. Much of this gas is now being wasted and strong political pressures are being brought to bear on United States' interests in all gas and oil producing areas. The technological problems of consumers have been resolved. The only open question is whether or not the United States' shipbuilding industry will participate in this market.

The LNG tankers now being designed, with a typical capacity of 125,000 cubic meters of containment space, will be in the approximate price range of 80 to 90 million dollars. At least 100 tankers of this capacity will be needed within ten years.

The technology of these tankers, insofar as the fabrication of their cryogenic tankage and handling systems is concerned, owes its origins in large degree to the United States aerospace industry. It is believed that, as in the case of many other highly sophisticated similar systems, United States production costs will not show anything like the degree of difference, vis-a-vis foreign costs, which exists in the building of other types of ships. Therefore, a lesser degree of support, well below the goals established in your program, appears to be enough to win our rightful share of this market.

It should be pointed out that virtually all major foreign maritime nations receive some form of government support to encourage shipbuilding. For example, the Japanese shipbuilding industry today, through the effective force of industry/government cooperation, coordination, and imaginative adaptation and improvement of techniques developed in the United States during World War II, enjoys over half of the total, world-shipbuilding export market. Japanese flag owners also receive special price considerations.

Japan has moved to a position of shipbuilding prominence by the creation of an

environment which has made this tremendous achievement possible. This environment has been shaped by governmental encouragement, careful monitoring, and support, mostly in the form of financing, credit, and tax devices designed to attract domestic as well as export ship construction contracts. These devices have generated a continuity of workload which, in turn, has (1) insured a stable level of shipyard operations, (2) enabled an expansion of national capacity, and (3) produced a favorable economic climate for shipbuilding.

Shipbuilding has thus become a substantial factor in Japan's national economy and balance of trade. It is regarded as a prestige industry essential to the national good, and the marketing of shipbuilding capabilities has been effectively cultivated with considerable stimulus and input on the part of the Japanese Government. As a matter of interest, the Commission has observed positive steps by the Japanese shipbuilders to insure a substantial position in the LNG market.

Until the enactment of the Merchant Marine Act of 1970, the United States private shipbuilding industry had been plagued by an environment in terms of limited, spasmodic markets and stifling procedures, beyond the industry's control. The situation is now changing. From our studies, inspections, and assessments thus far, there are substantial indications that most of the major problems within the private shipbuilding industry of the United States can be solved by an expanding and steady volume of contracts, stable employment for the labor force, and a more favorable total environment, all of which are closely related. The above, thus, are our interim findings and conclusions and are submitted with the hope that they will be helpful to you and your Administration in the formulation of national policies pertaining to our maritime posture, of which the shipbuilding industry is an integral ingredient. We believe, as is obvious from the foregoing, that the LNG tanker market presents the greatest, foreseeable opportunity to further our national shipbuilding goals, as well as improve our national maritime posture.

H.R. 13832

A bill to authorize the construction of forty liquefied natural gas carriers to meet the energy crisis

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Commerce is authorized to enter into contracts with shipbuilders of the United States or the Commonwealth of Puerto Rico for the construction, outfitting, and equipping of not to exceed forty LNG ships, with ship delivery date not later than January 1, 1980. Such contracts shall be awarded by competitive bidding to the lowest responsible bidder, with the right reserved in the Secretary to disapprove any and all bids: *Provided, however,* That the Secretary of Commerce may negotiate contracts with shipbuilders at what he determines is a fair and reasonable price if the shipbuilder (1) submits backup cost details and evidence that the price is fair and reasonable and (2) agrees that the Controller General of the United States, or any of his authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any pertinent books, documents, papers, and records of the shipbuilder or any of his subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this Act and will include in his subcontracts a provision to this effect.

(b) The Secretary of Commerce shall include in each contract for the construction of ships under this Act a provision that the

shipbuilder, subcontractors, materialmen or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph (k) of section 401 of the Tariff Act of 1930: *Provided, however,* That in respect to other than major components of the hull or superstructure and any material used in the construction thereof, (1) if the Secretary of Commerce determines that the requirements of this subsection will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is a concise explanation for the basis thereof, then the Secretary of Commerce may waive such requirements to the extent necessary to prevent such delay.

(c) No shipbuilder shall be deemed a responsible bidder, and the Secretary of Commerce shall not negotiate a contract with any shipbuilder, unless the Secretary of Commerce determines that the shipbuilder possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid, or negotiated price, submitted to the Secretary of Commerce shall be accompanied by all detailed estimates on which it is based. The Secretary of Commerce may require that the bids of any subcontractor or other pertinent data accompany such bid or negotiated price. All such bids and data relating thereto or to a negotiation price shall be kept permanently on file.

Sec. 2. (a) The Secretary of Commerce is authorized to sell to any citizen of the United States, as defined in section 2 of the Shipping Act, 1916, for operation in the United States domestic trade, any vessel constructed under the Act.

(b) The purchase price of the vessel shall be its construction cost less straight line depreciation on the basis of a twenty-five year life to the date of sale. The purchaser shall pay 12½ per centum of the purchase price at the time of sale and shall pay the balance and not to exceed twenty-five equal annual installments with interest at a rate not less than (1) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (2) an allowance adequate in the judgment to the Secretary of Commerce to cover administrative costs, the balance of such purchase price and the interest thereon being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Commerce may determine.

Sec. 3. The Secretary of Commerce is authorized to sell to any citizen of the United States, as defined in section 2 of the Shipping Act, 1916, for operation in the United States foreign trade, any vessel constructed under this Act. The purchase price shall be the construction cost of the vessel, less construction-differential subsidy determined under section 502(b) of the Merchant Marine Act, 1936, depreciated on a straight line basis and on the basis of a twenty-five-year life to the date of sale. Construction-differential subsidy for the purposes of this section shall not exceed 35 per centum of the construction cost of the vessel. The purchaser shall pay 25 per centum of the purchase price at the time of sale and shall pay the balance in not to exceed twenty-five equal annual installments with interest at a rate of not less than (1) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such loans, adjusted to the nearest

one-eighth of 1 per centum, plus (2) an allowance adequate in the judgment of the Secretary of Commerce to cover administrative costs, the balance of such purchase price, and the interest thereon, being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Commerce may determine.

SEC. 4. (a) The Secretary of Commerce is authorized to charter, to any citizen of the United States, any vessel constructed under this Act for operation in foreign or domestic trade with an option to purchase the vessel.

(b) If the vessel is chartered for operation in domestic trade, the annual charter hire shall be 4 per centum of the depreciated construction cost of the vessel plus the sum of (1) a percentage of the depreciated construction cost, computed annually upon the basis of a twenty-five year life of the vessel, determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum and (2) an allowance adequate in the judgment of the Secretary of Commerce to cover administrative costs. The option to purchase for operation in domestic trade shall be at the price specified in section 2 of this Act.

(c) If the vessel is chartered for operation in foreign trade, the annual charter hire shall be 4 per centum of the construction cost of the vessel less construction-differential subsidy determined under section 502 (b) of the Merchant Marine Act, 1936, depreciated on a straight-line basis and on the basis of a twenty-five-year life to the first day of the year for which the charter is to be paid plus the sum of (1) a percentage of the foregoing amount determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum and (2) on allowance adequate in the judgment of the Secretary of Commerce covering administrative costs. The option to purchase for operation in foreign trade shall be the price specified in section 3 of this Act.

SEC. 5. Vessels built under this Act shall be documented under the laws of the United States and shall remain so documented for twenty-five years.

SEC. 6. Operating-differential subsidy under the Merchant Marine Act, 1936, shall not be paid for operation of any vessel built under this Act.

SEC. 7. The term "foreign trade" as used in this Act means trade between United States, its territories or possessions, or the District of Columbia, and a foreign country.

SEC. 8. There are authorized to be appropriated such sums as are necessary, to remain available until expended to carry out the purposes of this Act.

BANKRUPTCY OF OIL IMPORT QUOTA PROGRAM IS NOW CLEAR

(Mr. CONTE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. CONTE. Mr. Speaker, as an article in today's Washington Post by Thomas O'Toole points out, a top administration official responsible for oil import policy acknowledged to me yesterday that the United States has now reached a point where it will be necessary to substantially increase oil imports.

The admission, made by Assistant Interior Secretary Hollis M. Dole in testimony before a House Small Business Subcommittee chaired by our colleague NEAL SMITH, is, of course, not a total surprise. Federal Power Commissioner John Carver, only last week, testified before us to the same effect.

Even major oil companies are now admitting this must happen. And, more significantly, the Texas Railroad Commission, which for years has artificially held down oil production to maintain high prices—in what is called "market demand prorationing"—last week abandoned its controls for the first time in 24 years. I will have more to say on the decline of prorationing in a few days.

Nevertheless, Secretary Dole's admission is also significant, since he and his Department for years have been the chief protectors of the domestic oil industry, at the consumer's expense.

Ever since oil quotas were first imposed in 1959, I have warned they would only serve to more rapidly deplete our own resources at a terrible cost to the consumer. President Nixon's own task force on oil import controls conceded in 1970 that quotas now cost consumers more than \$5 billion a year in artificially higher prices. In fact, when we add to that figure the \$4.3 billion a year we lose in revenues due to the oil depletion allowance and other unjustified tax breaks for this industry, the annual tab comes to \$9.3 billion.

In return for all this Government largesse we have been promised that domestic exploration would be increased to assure an adequate supply of domestic oil. What has happened, in fact, is that the major oil companies have spent far more on foreign than domestic exploration, and as a result we are fast running out of oil.

Mr. Speaker, we must not wait until the oil quota system collapses of its own weight. The consumer cannot be asked to continue to pay a terrible price for the transparent illusion of "national security." The time has come to enact my bill—H.R. 638 and identical bills, H.R. 4933, 4934, 4935, 5186 and 6851—which has more than 90 cosponsors, to repeal oil quotas and stop this inexcusable rape of the consumer now.

The article referred to follows:

INTERIOR AIDE SEES OIL IMPORT NEED IF U.S. OUTPUT BECOMES INADEQUATE

(By Thomas O'Toole)

A top official of the Interior Department conceded yesterday that the United States might have to raise its oil import quotas because domestic oil production is unable to keep pace with demand.

"We're looking right now at the possibility of a shortfall of crude oil in the U.S. and we're not prepared to say there won't be a larger deficit," Assistant Secretary Hollis M. Dole told the House Committee on Small Business, which is investigating the impact of the energy shortage on small business. "We're going to have to take a completely new look at our quota system."

Dole pointed out that Texas and Louisiana had raised their oil production "allowables" (Texas 100 per cent) in the last week, and that Venezuela was straining its capacity to keep up with U.S. demand.

Dole said the East Coast is already getting

50 per cent of its crude oil and 68 per cent of its fuel and heating oils from Venezuela.

"From what we know about Venezuelan reserves it is unlikely they will be able to furnish us with much more than they are now," he said. "This is why we must turn to North Africa and the Middle East."

Dole debated with Rep. Silvio Conte (R-Mass.) about when the United States must relax the restrictions on Middle East oil and by how much.

"You have to take oil where you can get it," Conte said. "Remove all restrictions, remove all quotas, and you'll see this whole thing stabilize itself."

Dole replied that the U.S. is still reluctant to raise its import quotas to admit Middle East oil.

"I'm not sure it would stabilize," he told Conte. "It would be my hope that it would, but I'm not all that sure."

"Well, we might not agree," Conte answered, "but you're getting closer to my way of thinking than the last time you were here before this committee."

While conceding that the U.S. might be easing its stand on oil imports, Dole said it is doing so with great reluctance.

"It's true we're coming closer to raising the imports," Dole said, "and this is what disturbs me—the impact our reliance on foreign oil has on national security."

Dole's relaxed stand on imports comes at a time when the U.S. oil industry has eased its own position. In recent weeks the industry has said production is no longer able to keep pace with demand.

WELCOME TO HON. OGDEN R. REID TO THE DEMOCRATIC PARTY

(Mr. BRADEMAs asked and was given permission to address the House for 1 minute, to revise and extend his remarks and to include extraneous matter.)

Mr. BRADEMAs. Mr. Speaker, I take this opportunity to say just a word with respect to the distinguished gentleman from New York, the Honorable OGDEN R. REID, who has just made a determination to become a member of the Democratic Party. Mr. REID is one of my closest personal friends in Congress, and has served as the ranking minority member of the Select Subcommittee on Education, which I have the honor to Chair, and of which he has always been a diligent, dedicated, hard-working, and public-spirited member. This has been, I know, a difficult decision for Mr. REID. I am confident that having become a member of the majority party he will continue to display the same sense of dedication and hard work that he has demonstrated in the other party.

I must here note, Mr. Speaker, the unusual significance of Mr. REID's decision, for his grandfather was a founder of the Republican Party and in 1892 its candidate for Vice President when Benjamin Harrison ran for President.

Moreover, Mr. Speaker, Mr. REID was the last member of his family to serve as editor of the New York Herald Tribune, long an example of responsible Republican journalism.

In addition, OGDEN REID also served with great distinction as U.S. Ambassador to Israel under President Eisenhower.

I might add, Mr. Speaker, as one who was brought up as a Methodist, I may

say that the decision of Congressman REID to join the Democratic Party after having served in the Republican Party for so many years only shows that it is never too late to be saved.

Mr. Speaker, I include at this point in the RECORD the text of an editorial in the New York Times of today, March 22, 1972, entitled, "Democrat Reid":

DEMOCRAT REID

Leaving the Republican party is a much tougher wrench for Representative Ogden R. Reid than it was for Mayor Lindsay. His grandfather was a founder of the G.O.P. and its Vice Presidential candidate in 1892 on a slate headed by Benjamin Harrison. The Westchester Congressman was the last member of his family to edit The New York Herald Tribune in its long career as a voice of intelligent Republicanism.

That Mr. Reid has decided he can no longer stay in the party is graphic evidence of how far to the right it has drifted under the leadership of President Nixon. Unquestionably, the stiff primary challenge Mr. Reid faced from powerfully backed conservative elements in the state G.O.P. helped prompt his switch into a Democratic party that is hardly at the peak of its popular appeal or internal unity. But an even stronger spur was the increasing distaste Mr. Reid felt for pretending ties with an Administration whose policies he could not swallow on such issues as civil liberties, education, child care, the fight against racial discrimination and the pace of extrication from Vietnam. Above all, his break came out of despair at the divisive trend of most Administration approaches.

As believers in a strong and vital two-party system, we are sad to see the Republican party in this state—so long a leader in the party's progressive wing—becoming a conservative bastion with diminished appeal to independents of the type responsible for the repeated elections of Governor Rockefeller and Senator Javits. But the Governor himself has been a poor recent steward of that tradition and Mr. Reid risked total isolation. His decade of service in the House has been marked by steady growth in the quality and diversity of his accomplishment. Still short of his 47th birthday, he brings to the Democrats another future leader of great decency, dedication and talent.

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. BRADEMAS. I am happy to yield to the majority leader.

Mr. BOGGS. I concur in the remarks made by the distinguished gentleman from Indiana, and welcome to the ranks of the majority party in the House the distinguished gentleman from New York (Mr. REID). I, like the gentleman from Indiana, have known the gentleman from New York well and favorably for many years. I first came to know him when he was our Ambassador to Israel back in President Eisenhower's administration.

I have watched his work here since he first came to Congress. He has been conscientious, able, innovative, and dedicated. We are glad to have him, and I know he will make a great contribution to our party.

Mr. Speaker, in this connection, I include an editorial from today's New York Times:

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Mr. BRADEMAS. I thank the distinguished majority leader.

EASY ANSWERS TO ECONOMIC PROBLEMS?

The SPEAKER pro tempore (Mr. LINK). Under a previous order of the House, the gentleman from Florida (Mr. GIBBONS) is recognized for 60 minutes.

Mr. GIBBONS. Mr. Speaker, our history books are filled with the stories of leaders who chose easy but illusory answers to their difficulties, only to have their countries follow these answers to ruin. And those who have not learned from these mistakes will be condemned to repeat them.

Today we live in a terribly complex and interdependent world—a world in which there literally are no easy answers to the difficulties which confront us, and yet those who would have us accept this kind of answer persist.

False but expedient answers have always been damning, but how much truer this is today than it has ever been. Certainly we can no longer afford the luxury of picking easy, illusory answers to any of the real problems facing us, be they political, social, or economic.

Last fall a number of us became quite concerned about the easy answers which were being offered to solve our domestic and international economic problems. We saw foreign countries made the scapegoats for all of these difficulties, and the claim was made that we could restore our economic health if only we would cut ourselves off from these foreign devils.

This solution was simple enough, all right, but it had virtually no connection with the facts of our economic situation.

Also, history warned us of the perils of a country's trying to protect its economic interests by building a wall of trade restrictions around its borders. Our attempt to do so in the 1930's proved to be cruel folly.

So, in the belief that the answer of "protectionism" was a false and perilous one, our bipartisan group of Members set about trying to find out more about the reasons for our economic problems and their relation to international trade and investment.

As part of this effort to educate ourselves and others about the facts of our economic problems, we conferred with a number of economic experts. In fact, we are still doing so. We also scheduled a series of three special orders in the House on the relation between trade and investment and the health of our domestic economy.

Having tried to show in the first two special orders last fall how needless and foolish "protectionism" is, it seemed only fair that we should focus our attention on the real economic issues for the United States in this third special order and on constructive measures which might be taken to deal with these issues effectively.

We hope not to fall into the "easy answer" trap which we have criticized so strongly, for these economic issues are not easy ones to solve. Rather, we hope to talk about more fruitful and realistic solutions to our economic problems than protectionism or trade restriction, which only denies the reality of our economically interdependent world and can harm us all irreparably.

We do not claim special expertise in the economic field, but we are guided by what we think to be some important contributions by those who specialize in this area. We intend to continue trying to understand our economic problems better and to develop remedies to them. We offer our thanks to those who have helped us in this regard and we hope they will continue to do so.

Our first special order on November 19 was concerned with the great benefits to the United States and to the whole world which flow from world trade and continued international cooperation. The second special order, on December 8, dealt with the very real danger that the severe trade restrictions which have been proposed by some Americans would not only fail to protect the interests of this country economically, but would surely result in retaliation which could plunge the whole world into another series of depressions and trade wars.

Since these special orders, our findings on the benefits of trade and the dangers of trade restrictions continue to be confirmed.

Andrew Brimmer, a member of the Board of Governors of the Federal Reserve System, recently completed an excellent study regarding the positive effects of trade on our economic well-being. I would like to include that statement at the end of my remarks.

Without a doubt, imports not only make a wide variety of goods available to Americans at reasonable prices, but they are also immensely important in

keeping American industry on its toes. Commerce Secretary Peter G. Peterson recently told the Joint Economic Committee of Congress:

I don't even remember in my previous business incarnation ever waking up, driving to work and thinking how glad I was to have competitors. Deep down I suspect a few of us really enjoy competition. It was easy to like foreign competitors even less. But we certainly learn, if too slowly and reluctantly, to respect the enormous importance of competition in spurring us to improve products and lower costs in ways we would not otherwise do.

I have asked this question many times before: Where would many American motorists be today if the practical little Volkswagen had not become available as an alternative to the large American cars which were being produced by U.S. automobile manufacturers?

On December 14 I made a statement in the House about the false claims of some textile manufacturers that they were being put out of business by cheap foreign imports and thus many American workers in these industries were losing their jobs. The fact was that in many of these cases, mismanagement, changes in consumer tastes, or other causes completely unrelated to imports were responsible.

At the end of my remarks today I would like to include some information on the health of another American industry which has sharply attacked imports as responsible for their difficulties—the footwear industry. I do so because I believe that it is most important that we face up to the facts about trade. This is not to deny that some few of our domestic economic problems may have some connection to our foreign trade, but let us be very sure that we do not foresake the very substantial benefits of trade for false reasons.

In our first special order I pointed to the report and papers of the President's Commission on International Trade and Investment Policy as a good source for a balanced presentation of our domestic and international economic situation. While I may disagree with a few of the recommendations offered by the Commission, I believe their "program for action" is as valid and important today as it was when the report was issued in July of last year.

I am pleased that we have made progress in some of these areas and deeply regret that we have not shown the leadership and sense of urgency about these matters which the Commission judged necessary.

As the Commission and many others have ably pointed out, improvement of our domestic economic situation is key to both meeting the current objections to trade and allowing us to continue expanding the benefits we reap from trade.

We have seen that trade simply cannot be blamed for our domestic economic problems and that, even according to the goal of domestic employment, we stand to lose much more than we would gain by trade restrictions.

Further, it has become apparent that our failure to deal effectively with our high unemployment and inflation rates,

coupled with an out-of-date international monetary system and a virtually useless adjustment assistance program, is basically what brought us to the brink of international economic disaster by August 15 of last year.

It is my own feeling that we must do more to restore our domestic economic health, particularly in the area of employment. I strongly support the "Jobs Now" program which has been proposed in Congress and I look forward to the first report of the Productivity Commission. Our own Science and Astronautics Committee has done a good deal of work on the subject "Science, Technology and the Economy" and has made some specific recommendations on the implications of its findings for our international economic problems in their interim report.

There are also indications that we must have a better organization of Government agencies who deal with our domestic and international economic policies, as well as better coordination with Congress on decisionmaking in this area.

Dr. Harald Malmgren, a noted international economist and an adviser to Ambassador William Eberle, our Special Representative for Trade Negotiations, has stated in his new book that we must give much more attention and priority to our international economic interests. In fact, he believes that we need a whole new international system for stabilizing economic and trade relationships to contain conflicts. This multilateral economic peacekeeping apparatus should be supplemented, Malmgren says, by economic negotiations equivalent to the current strategic arms limitation talks—SALT.

I believe that many of Dr. Malmgren's suggestions, including ones relating to Government reorganization and better coordination of international economic policy, deserve serious consideration. At the end of my remarks I would like to insert a review of Dr. Malmgren's book which appeared recently in the *Journal of Commerce*.

There have been many other recommendations for a more active Government role in areas such as data collection, economic planning and the expansion of support for research and development, as well as for changes in Government policy in areas such as antitrust law and taxation. The issues involved here may be complex ones, but I think they are too important for us not to investigate these recommendations carefully and make these changes where they are appropriate.

With regard to antitrust laws as they affect companies doing business abroad, there can be little doubt that there is a need for clarification of the laws, for instance as they related to export associations. Federal Trade Commission Chairman Miles Kirkpatrick recommended in his testimony on the Export Expansion Act certain changes in the antitrust laws as they relate to export associations. In any case, there is certainly a need for clarification.

Because I think it may be of interest, I'd like to include at the end of my remarks information on the value of an export association to the phosphate

producers in my home district of Tampa who produce for export. I would also like to insert a statement on the value of our "metrification" as it relates to trade.

Our proceeds from trade represent only 4 percent of our GNP. Nonetheless, there is evidence to indicate that the expansion of our trade can actually help restore our domestic economic health.

For some time our balance of trade suffered from the fact that the American dollar was overvalued in relation to other currencies. The recently approved devaluation of the dollar in terms of gold by 8.57 percent, coupled with a 12-percent realignment of the dollar with the currencies of our major trading partners, should be of great help in making our exports more competitive in world markets. Whatever progress we can make in reducing inflation and improving productivity will also do so, and we can expect an additional 60,000 jobs for each \$1 billion gain in our balance of trade.

Our success in this area will be a fleeting one, however, if we do not assume more leadership than we have since August 15 in establishing negotiations on a new international monetary system which will have the reserves to facilitate expanded world trade and investment and an exchange rate mechanism which will be stable and yet flexible enough to avoid the kind of exchange rate crises which have characterized the system in recent years.

Immediate negotiations on the convertibility of existing dollar balances should be undertaken in order to maintain the functioning of the international monetary system. Some good recommendations on this issue are contained in the forthcoming report of the Joint Economic Committee on the President's 1972 Economic Report.

A number of recent studies have shown how multinational corporations, which operate in this country and abroad, contribute to our economic welfare. Private and Government studies have revealed that—

U.S. multinational corporations increased exports by 180 percent between 1960 and 1970, as compared with a national average of 53.5 percent for the country's businesses as a whole.

One hundred and twenty-one multinationals surveyed showed employment increases in the United States during 1970 of 31.1 percent, as compared with a 12.3-percent growth in U.S. manufacturing employment in general.

The major reason for multinational companies to establish plants in foreign countries is the problem of retaining foreign markets and overcoming tariff and trade barriers. Far less than 10 percent of overseas production is for American consumption. Thus, this production benefits Americans by increasing employment in this country to some extent and by enabling American multinationals to make foreign sales which they would have otherwise lost to businesses from other countries.

We cannot of course continue to benefit from expanded world trade and investment unless existing international economic barriers to these activities are removed wherever possible.

In this connection, I think it is most

encouraging that the United States, Europe, and Japan have agreed to embark on a major new round of trade negotiations in 1973. No country can expect to have its own way completely at these negotiations. However, the very fact that we will be sitting down with the other major trading nations of the world to try to achieve mutually beneficial changes in our various national trade and investment policies is a most promising development.

The United States is the world's richest country and the world's largest single export market for other countries, while our exports represent one-fifth of all free world trade. However, the other countries of the world are growing strong economically and, particularly with the increasing unification of Europe, it has become obvious that the United States cannot dictate terms on the international scene—nor should we want to do so.

It is of course hard to achieve a balance between negotiations aimed at our economic self-interest and statesmanship aimed at harmonizing international economic relations and promoting world peace. However, I fear we have erred recently on the side of self-interest, unreasonable demands on countries which are old friends of ours, and undue delay, as in the area of international monetary reform. I sincerely hope that we can look forward to leadership in the administration and in Congress reflecting the realization that cooperative multilateral solutions to our international problems are absolutely essential.

The Foreign Economic Policy Subcommittee of the House Foreign Affairs Committee will hold informational hearings in late April on our existing adjustment assistance program and proposals to improve it which have been made. Hopefully, these hearings will extend to proposals which would provide some Government assistance in legitimate cases of economic dislocation, regardless of whether an increase in import competition was the reason for the dislocation or whether some other economic factor was involved.

In general, I think it can be said that we have made some impressive progress in starting to find solutions to our real domestic and international economic problems.

As I have indicated, I think much more remains to be done in certain areas, and I sincerely hope that we will continue to progress toward these solutions on the basis of the ever-increasing information on our economic problems which is becoming available to us.

Our welfare and that of the whole world depends on our ability to find cooperative solutions to these pressing problems.

The inserts follow:

IMPORTS AND ECONOMIC WELFARE IN THE UNITED STATES

(Remarks by Andrew F. Brimmer, member Board of Governors of the Federal Reserve System before the Foreign Policy Association, February 16, 1972)

IMPORTS AND ECONOMIC WELFARE IN THE UNITED STATES

Last October, when I accepted the invitation to appear before this Association at this

time, I indicated that the subject matter of my remarks would concern "The Dollar at Home and Abroad: Perspectives on the International Economic Position of the United States." That umbrella topic was chosen because it was impossible to anticipate at that time the outcome of the multilateral negotiations then underway among leading industrial countries to realign foreign exchange rates. But it was understood that I would focus on a more limited aspect of the general subject—the specific topic depending on the circumstances prevailing in the international arena at the time I actually appeared before you.

In the meantime, an historic realignment of exchange rates has occurred, and its general features have been thoroughly and widely reported. While the international payments system established at Bretton Woods facilitated the growth of world trade and investment for more than a quarter of a century, serious imbalances among the leading industrial and trading nations did develop in recent years. Undoubtedly, the principal manifestation of this disequilibrium is the large and persistent deficit in the United States balance of payments.

I am indebted to several members of the Board's staff for assistance in preparation of these remarks. Mr. Samuel Pizer had overall responsibility for the staff effort. Mr. Daniel Roxon made the estimates of employment effects of foreign trade, and Mrs. Barbara Lowrey helped with the analysis of the effects of import restrictions on consumer prices. Mrs. Betty L. Barker also provided assistance in the analysis of both employment and price effects. Of course, I alone bear responsibility for these remarks.

The elimination of that deficit has been an important national objective, and the realignment of exchange rates agreed to last December in Washington should help us achieve that goal over the next few years.

A keystone of that agreement was the decision by the United States to propose a devaluation of the dollar by 7.89 per cent. On February 9, the U.S. Treasury Department transmitted to the Congress a proposal to raise the official price of gold by 8.57 per cent (from \$35 to \$38 per ounce)—and thus fulfill the pledge made at the Smithsonian meeting. Another feature of that agreement was the expectation that the United States would obtain significant modifications in trade practices abroad that actually or potentially hampered our exports.

In the last few weeks, the United States has worked out liberalizing arrangements for some exports to Japan and the members of the European Economic Community (EEC), and discussions are continuing with Canada. Moreover, on February 11, the United States and the EEC jointly called for multilateral discussions starting in 1973 with the aim of erasing existing barriers to trade. Australia and Canada have indicated their support of such talks, and the support of other countries is also being sought.

Against the background of these events, the foreign exchange markets are still adjusting to the rate realignment and the existence of wider margins of fluctuation. Congressional hearings on the gold price bill are scheduled to begin next week. Consequently, under these circumstances, I decided to focus my remarks today on one aspect of U.S. international economic relations where the issues involved are clearly drawn—although by no means settled. I thought that a discussion of the relationship of imports to the welfare of American consumers would be both interesting and of considerable domestic significance at this time.

In the view of a sizable number of Americans, imports are "bad" while exports are "good." Of course, this unfavorable view of imports is not hard to understand: it is partly a legacy of the eighteenth century

mercantilist notion that a nation could increase its wealth by selling more to foreigners than it brought from them—and by collecting the favorable balance in gold! But it is also partly the result of a more modern idea that a country can increase domestic employment through maximizing exports while keeping imports to a minimum. Undoubtedly still other sources of the bias against imports could be identified. But whatever the explanation, the net result is to create a bad image of imports in the eyes of a sizable proportion of American citizens. In fact, with few exceptions, the same situation exists in most other countries.

In our own land, the hostility toward imports is probably more widespread than it has been for many years. One can detect this hostility in public opinion polls, newspaper editorials—and above all in the polemics of protectionist organizations. Moreover, it appears that sentiment in Congress is becoming increasingly sympathetic toward plans to limit imports.

I had hoped that the campaign to place severe restraints on imports had passed its highwater mark a year or so ago when the effort to impose quotas on textiles and shoes failed to win Congressional approval. Sadly, however, a new—and far more comprehensive—movement to restrict imports has been launched, and a number of supporting voices are being heard in both houses of Congress. One particular proposal would impose quotas on an extremely broad range of imported commodities while also severely limiting foreign direct investment by U.S. corporations. In the public at large, a noticeable number of traditional defenders of freer trade (especially some segments of organized labor) are abandoning their positions to join the ranks of the protectionists.

This rising tide of protectionism is not only distressing; it is also fundamentally against the best interest of American consumers. If the effort is successful and imports are severely limited by quotas, the range of consumer product choices will be narrowed considerably; consumer prices will be appreciably higher, and the burden will fall most heavily on those low-income groups least able to bear the costs.

Given this prospect, it is urgent that those of us who believe in the benefits of freer trade do what we can to help prevent the protectionists from building a fence around the American market. We must not be misled by the mistaken argument that the advocates of restrictions of imports are protecting the jobs of American workers. I am aware of the spurious argument which holds that "workers are consumers," "consumers have to work in order to consume," so the interest of the two groups are the same. The fact is that workers work for income, and they maximize their welfare by spending their income on as wide a range of goods and services as possible—paying the lowest prices they can find. To obtain income, it is obviously necessary for most people to work, and the expansion of job opportunities is obviously important. But we must avoid confusing the situation of consumers with that of employees in particular industries.

The rest of these remarks is devoted to a discussion of imports and economic welfare in the United States. The principal focus is on the employment effects of foreign trade and the costs to consumers of restricting imports by quotas and similar devices. Several key conclusions can be summarized here:

Studies I have made suggest that the foreign trade sector of the United States economy may be generating more than 750,000 jobs, even after allowing for the number of jobs that might be displaced by competitive imports.

The existing quotas on sugar may be costing American consumers as much as \$300 to

\$500 million each year, and the recently arranged agreement restrictions imports of man-made fiber and woolen textiles into the U.S. may cost consumers as much as \$300 million in 1972. Petroleum quotas apparently cost consumers an extra \$5 billion in 1969 alone.

Competition from imports also helps to dampen increases in prices of domestically produced products. This conclusion is clearly suggested by the behavior of prices for several categories of items during the inflation that has prevailed in this country since the mid-1960's.

These and several other points are explored more fully below.

GROWTH AND IMPORTANCE OF IMPORTS

In 1971, imports amounted to \$45.7 billion. Exports totaled \$42.8 billion. So last year the United States recorded a trade deficit of \$2.9 billion.¹ The trade deficit in 1971 reflected a year-to-year rise of nearly 15 per cent in imports in contrast to a gain of about 2 per cent in exports. Over a longer horizon, the growth of imports has been equally dramatic. Between 1961 and 1971, the level of imports rose by \$31.1 billion, an increase of 214 per cent. Over the same decade, exports rose by \$22.6 billion, an increase of 113 per cent.

While exports have grown only slightly faster than the American economy as a whole during the last decade, imports have grown about 1½ times as fast. As a result, the ratio of imports to gross national product (GNP) climbed from 2.79 per cent in 1961 to 4.36 per cent in 1971. At the same time, the export-GNP ratio edged up from 3.87 per cent to 4.08 per cent.

The main explanations of these divergent trends are widely known: the rapid expansion of aggregate demand in the United States (especially after 1964) induced a significant rise in imports of materials required to sustain domestic production. As the economy expanded, consumer incomes rose appreciably, and a sizable share of the increase was spent on foreign goods. Moreover, because of the inflation associated with the Vietnam War, the competitiveness of U.S. exports declined progressively. Simultaneously, foreign producers found it increasingly possible to undersell some U.S. products in our own market. Although trade barriers executed or maintained by some of our principal trading partners clearly hampered the growth of U.S. exports over the last decade, the basic disequilibrium in our own economy in the last half of the 1960's—aggravated by the rigidity of exchange rates—was a major cause of the sluggish performance of exports in the face of a vigorous advance in imports.

OVERALL IMPORTANCE OF IMPORTS

While imports represent only a small share of total GNP (4.36 per cent), their importance in the supply of goods available in the United States is much greater—in excess of 8 per cent. In a number of particular sectors and industries, the share is even higher. In this context, we can put aside those categories of commodities in which imports are our only source of supply—such as bananas, coffee, cocoa and tea.

In the last two years, over 15 per cent of new automobiles purchased in the United States were foreign-type imports (cars imported from Canada are considered to be domestic-type). In other consumer goods lines, imports were equally or more important. For example, in 1970, imports represented the indicated percentages of domestic supply in the following lines:

	Percent
35 mm still cameras.....	100
Magnetic tape recorders.....	96
Motorcycles.....	90

Hairwork (toupees and wigs).....	85
Radios.....	70
Amateur motion picture cameras.....	66
Black and white TV's.....	52
Sewing machines.....	49
Sugar.....	*45
Leather gloves.....	30
Footwear (nonrubber).....	30
Liquors.....	*28
Flatwear.....	22
Canned sea food.....	*20
Wine.....	*20
Textiles (including apparel).....	12

*Percentage in 1968, the year for which latest data are available.

Of course, imports are not limited to consumer-type goods. Many of our imports are industrial materials which are essential to domestic production. For instance, in 1968, imports constituted the following percentages of domestic supply.

	Percent
Natural abrasives.....	100
Manganese ores.....	95
Bauxite.....	83
Scouring products.....	40
Iron ores.....	35
Pulp mill products.....	31
Copper (smelted).....	27
Lead and zinc ores.....	27
Potash.....	27
Steel.....	15

In interpreting these rough measures of U.S. market penetration by imports, one should remember that the ratios summarize greatly varying situations in a number of large and diverse product lines. For instance, in both textiles and steel, there is a significant number of specific and major product categories in which imports account for well over half of total domestic consumption. Nevertheless, taking the economy as a whole, imports still represent only a modest fraction of total production, and foreign producers have captured only a small share of the overall market in the United States.

U.S. FOREIGN TRADE AND DOMESTIC EMPLOYMENT

As I indicated above, opposition to imports is increasing partly because the inflow of foreign goods is said to have an adverse effect on American jobs. With domestic economic activity moving at a slow pace last year—and with the number of unemployed now exceeding 5 million—this opposition to imports has been further strengthened. Thus, it might be helpful to put in perspective the effect of U.S. foreign trade on domestic employment.

In interpreting the estimates presented below relating domestic employment to foreign trade, it is necessary to keep their tentative nature in mind. In making the estimates, care was taken to spell out explicitly the assumptions made and the nature of the statistical information on which I relied. The use of estimates, of course, cannot be avoided if economic analysis is to be employed for the illumination of vital issues of public policy. So, while the figures must be used with caution, they do provide an indication of the magnitudes involved.

The number of jobs related to our foreign trade—that is, generated by imports as well as by exports—is not insignificant. In 1969, according to estimates made by the Bureau of Labor Statistics (BLS) in the U.S. Department of Labor, about 2.6 million jobs could be attributed to the \$37.5 billion of exports of merchandise in that year. Thus, about 69,000 jobs were associated with each \$1 billion of exports in 1969.² Export-related employment covers persons engaged directly in producing for exports (termed primary employment) as well as those employed in industries supplying goods to those industries which actually do the exporting (termed indirect export employment). According to the

BLS studies, the ratio of primary to indirect export employment is approximately 1 to 1—that is, for every job in the industry doing the exporting, there is a supporting job in another industry providing goods to the export industry.

The number of jobs currently related to exports apparently is roughly the same as that estimated by BLS a few years ago. This conclusion is based on a new estimate which I made using the BLS technique to update the latter's 1969 figures. According to my rough estimate, there were approximately 2.65 million jobs related to export activity in 1971. Since the value of merchandise exports last year amounted to about \$40 billion (in 1969 prices), there was an average of 66,000 jobs per \$1 billion of exports.³ This estimate suggests that increased productivity in export industries has almost kept pace with the growth of export volume, so there has been little net gain in export-related jobs.

In the aggregate, export employment accounts for about 4 per cent of total private employment. However, the relative share of export-related employment is much higher in a number of important sectors. About 9 per cent of total employment in agriculture in 1969 was related to exports, while in the manufacturing sector BLS estimated that exports accounted for about 7 per cent of total employment—or about 1½ million jobs. Among manufacturing industries, the contribution of exports to employment was particularly high in the construction machinery industry (27 per cent), engines and turbines (15 per cent), office and computing machines (13 per cent), and aircraft (14 per cent).

IMPORT-RELATED EMPLOYMENT

The estimation of domestic employment related to imports is far more difficult than was the case with exports. In the first place, some imports clearly compete with domestically-produced goods. So the task here is to estimate the employment that *theoretically might occur*—assuming other factors are constant—in the event that these imports were produced in the United States. Secondly, other imports do not compete with domestically produced goods but rather are necessary for domestic production or require distribution and marketing services. Thus, they increase employment opportunities in the domestic industries using the imports. In order to get some measure of the employment effects of imports, it is necessary to classify imported products according to their competitiveness with domestic products. This, of course, is no simple task, and—frankly—no one has been able to devise a uniformly acceptable method to do this.

However, if the assumption used by the BLS in developing estimates of the "hypothetical" employment that might result from producing "competitive" imports in the United States is accepted (i.e., that 75 per cent of all imports fall into this category), the number of such jobs was approximately 2.4 million in 1969. In view of the sharp rise in the volume of imports since 1969 (about 12 per cent compared with a much smaller increase in output per person), it is not unlikely that the number of such jobs in 1971 was somewhat higher. As with exports, the employment estimates include both direct employment necessary to produce the item and the indirect labor necessary to provide the supplies, material and services incorporated into the final commodities.

Again, as noted above, the sharp rise in the number of jobs affected has aroused labor unions and others to become increasingly critical of national policies promoting freer trade and less mindful of the advantage of such a system to the domestic economy. Consequently, the employment aspects of foreign trade might be elaborated somewhat further.

Footnotes at end of article.

It is important to keep in mind that estimates of employment gains from restricting imports represent "hypothetical" employment. They do not represent the actual number of jobs lost because of imports which would be gained in the absence of imports. For example, without a concerted effort to reallocate resources, the U.S. would be unable to find people with the requisite skills—not to mention other resources—to produce imports domestically. Rather the effort to replace imports with domestic products in recent years would have placed additional stress on the economy and further heightened inflationary pressures. But probably most important of all, a large-scale effort to substitute domestic products for imports would bring about a reduction in exports. Some imported items have embodied materials or components which are exports of the U.S.—for example, automobiles from Canada which incorporate parts exported from the United States; imported transistorized appliances which include exported electronic components; and imported textiles which contain domestic cotton. Any employment created by domestic production of imported items which contain U.S.-made components would be offset, in part, by the loss of employment related to the exports of the components. More generally, exports pay for our imports, and restriction of one part of our foreign trade (imports) is bound to react on the other part (exports). Hence the job gains on the import side would be partly offset by jobs lost on the export side. Expressed another way, the jobs related to exports are not independent of imports.

The remaining 25 per cent of imports are generally considered to be "noncompetitive" with goods produced in the United States. These imports include some products which are not produced at all in the United States—e.g., coffee, cocoa, chromite, tea, etc. Of course, it is conceivable that, with a sufficient expenditure of effort and resources, it might be possible to produce some of them domestically, but the amount of employment that would be created is purely speculative and is not of any practical interest. Moreover, there are a number of imported goods that are comparable to domestic goods—but which are in short supply in the United States—such as bauxite, asbestos, and newsprint. These imports supplement domestic production. To expand production of these goods to replace imports would also require a large—and probably very costly—investment of labor and capital.

Obviously imports that are not produced at all or which are needed to supplement short supplies in the United States are clearly different in their impact on the economy from those which are "competitive" with domestic goods. "Noncompetitive" imports are generally accepted as integral and necessary inputs into the domestic economy, and they are undoubtedly beneficial to domestic output and employment. Certainly there are many U.S. jobs involved in processing, transporting and marketing these goods. These jobs, together with jobs similarly involved in marketing and shipping "competitive" imports, are *real* jobs that actually exist today, and they are not at all like the "hypothetical" employment that might result from producing competitive imports domestically.

Clearly there must be a considerable number of jobs associated with the \$45 billion of imports recorded in 1971. Unfortunately, there are no official estimates of such jobs. However, using the input-output tables and the level of merchandise imports in 1971, I made a rough calculation of the number of jobs associated with the processing and marketing of imported goods which are considered noncompetitive (25 per cent of imports) as well as with the domestic market-

ing of competitive imports. The very rough estimate suggests that in 1971 about 650,000 jobs were directly related to such activities. Unlike the estimates of jobs related to exports and to competitive imports if produced domestically, this estimate does not include the indirect employment which might result from the processing of crude and semifinished industrial materials or other noncompetitive imports. There is no way of determining whether employment in supporting industries is dependent on the existence of these imports. It is possible that the bulk of the employment in such supporting industries also provide materials to industries processing domestically produced materials, and such jobs would exist without the imports. However, if employment in these supporting industries is primarily dependent on imports, then the estimated 650,000 jobs generated by imports would be on the low side.

There is still another contribution that imports make to domestic employment which is often overlooked. Because of the relative cheapness of foreign products as compared to domestic products, domestic consumers have extra disposable income to spend on other products. For example, in 1971, competitive imports were about \$40 billion landed in the United States. If foreign products were 10 per cent cheaper than domestic goods (and I realize this is a crucial assumption), then American consumers would have roughly \$4 billion more to spend on other goods than if they had bought these competitive imports domestically. Since it is estimated that about 100,000 jobs are created for every \$1 billion of expenditures by consumers, then approximately 400,000 additional domestic jobs could result from the savings made by consumers in buying the cheaper foreign goods. (Actually this is overstated since part of the \$4 billion saved by consumers would also be spent on foreign goods. If foreign goods constitute about 10 per cent of total expenditures, then the amount available for expenditure on domestic goods would be \$3.6 billion with a job contribution of 360,000.)

OVERALL EMPLOYMENT EFFECTS

To sum up, when one attempts to estimate domestic employment related directly or indirectly to U.S. foreign trade, it is necessary to include: (1) the employment generated by exports, (2) the jobs associated with the processing and marketing of imports, and (3) the employment resulting from consumers buying cheaper foreign products. In combination, these jobs clearly exceed the number of "hypothetical" jobs which might result if competitive imports were produced in the United States. Again, the estimates of foreign trade-related employment presented here are rough, and they should be interpreted with caution. Yet, they do demonstrate that the question of jobs cuts both ways. One may hope that this perspective will be kept in mind as the role of imports is debated.

IMPORTS AND CONSUMER WELFARE

The importance of imports to consumers should not be minimized. The availability of imports means that consumers are able to buy products not produced domestically—or that they are able to choose among a greater variety of styles or a broader range of prices than if only domestically made goods were available. For example in 1970, the Presidential Task Force on non-rubber footwear concluded that "... from the consumer point of view, imports have opened up important new options. The extremely low-priced imports, priced often far below any comparable domestic footwear except canvas-upper, rubber-soled footwear, have provided entire new lines of basic foot coverings. At the other end, there can be little doubt that styles developed abroad in the higher price ranges have also provided new

consumer choices." As is widely known, for many years imports of foreign automobiles (such as Volkswagen) offered American consumers the only choice of small cars.

The fact that imports enable consumers to buy lower-priced goods than are available domestically can be documented in a variety of ways. One way is to compare the prices of domestic and imported products where this can be done directly. Thus, in late 1970, the average price of imported footwear and imported apparel was estimated to be only 60 per cent of the price of domestically produced items.⁴ In the case of automobiles, there may be as much as a \$1,000 differential between the average price of foreign and domestic-type cars, although, of course, the actual vehicles are quite different. But the imported automobiles are clearly advantageous to lower income consumers. The world price of a barrel of petroleum may be one-third less than the domestic price at the well-head. And the list could be extended still further.

However, an even better way to illustrate the price advantage of imported goods to consumers is to examine the effects of restricting such imports by the imposition of quotas. Several specific cases involving important consumer items can be cited:

Petroleum: Mandatory quotas on petroleum have been in effect for an extended period of time. It is estimated that they have kept domestic prices perhaps more than \$1.25 per barrel higher than world prices. According to the Cabinet Task Force on Oil Import Control, which submitted its report in early 1970, "... in 1969 consumers paid \$5 billion more for oil products than they would have paid in the absence of import restrictions. By 1980 the annual cost to consumers would approximate \$8.4 billion. Without import controls, the domestic well-head price would fall from \$3.30 per barrel to about \$2.00, which would correspond to the world price. Although we cannot exclude the possibility, we do not predict a substantial price rise in world oil markets over the coming decade." A majority of the Task Force recommended that the present quotas be replaced by a system of tariffs involving a lesser degree of protection.

Unfortunately, the Task Force's recommendation was not accepted, and American consumers have continued to provide a substantial subsidy to domestic producers of petroleum products.

Sugar: Quotas on sugar imports have been in effect since the mid-1930's. The policy is aimed at stabilizing prices and supporting the domestic sugar industry. While the sugar control program is obviously complex, one undisputed result has been to peg sugar prices in the United States considerably above world prices. One of the reasons why the world price is much below that in the United States is that foreign producers, after supplying their quotas at very favorable prices in the United States, in the United Kingdom, and in a few other countries using quota systems, can afford to sell their residual supplies on world markets at very low prices and realize a reasonable overall profit margin.

If the United States (and other countries) were to remove controls on sugar imports, the price to the U.S. consumer would fall, the world price would rise somewhat, and a single effective price would be established at some level between the two. Of course, the exact level cannot be estimated in advance, but a rough idea can be gotten of the magnitude of the subsidy which American consumers are providing to producers and distributors of domestic sugar. In 1970, total consumption of sugar in the U.S. was over 20 billion pounds. Of this amount, 55 per cent was produced domestically, and 45 per cent was imported. Roughly one-third of total consumption was accounted for directly by consumers, and the remainder served

Footnotes at end of article.

as intermediate inputs for industry. In the end, however, consumers of final products had to pay for the full (and higher) costs of sugar. Consequently, using actual prices published, we can estimate the cost of sugar quotas to consumers, although the latter did not purchase directly the entire supply available for consumption.

In the four years 1968-71, the U.S. wholesale price of sugar averaged about 3 cents per pound higher than the estimated import price. (The estimated import price is about 1 cent higher than the world price because of duties and freight.) Given this price differential, the cost of the sugar quota can be estimated. First, we can assume that the domestic wholesale price would be forced down to the prevailing import price in the absence of quotas and that the domestic retail price would fall by the same absolute amount as the domestic wholesale price, i.e., by 3 cents per pound. This reduction of 3 cents per pound, would have saved an American consumers of sugar roughly \$600 million, valued at the retail level, in 1970.

Of course, it is entirely possible (and indeed probable) that, with the elimination of quotas, a new price for sugar would fall between the current domestic price and the import price—rather than declining all the way to the current world market value.⁵ Nevertheless, the savings to consumers would still be substantial—perhaps in the neighborhood of \$300 million to \$500 million.

Textiles: The recently concluded multinational agreement fixing quotas on imports of man-made fiber and woolen textiles will have a sizable impact on American consumers. The agreement will limit the growth of such imports from Japan to 5 per cent a year, and from Korea, Taiwan and Hong Kong to 7½ per cent a year, compared with an average rate of growth of nearly 20 per cent in the last few years. Consequently, the imposition of the quotas should have noticeable effects. In 1971, imports of such textiles were approximately \$2 billion. In the absence of quotas, and if recent growth rates continue, they could rise to perhaps \$2.4 billion in 1972 (ignoring the effects of the exchange rate realignments agreed to last December). Under the quotas, however, these textile imports will be limited to a value of about \$2.1 billion. Thus, if total demand remains unchanged, an additional amount of textiles (valued at \$300 million, f.o.b.) would have to be supplied by domestic producers.

How much more in excess of \$300 million will American consumers pay for this foreign dock-side value of goods? It has been estimated that the normal mark-up of imports of textiles and apparel is approximately 50 per cent. So at retail, the quota-prohibited imports would have cost consumers \$450 million. However, if we use the relative price of apparel as a means of valuing total textile imports, we would estimate the average retail price of domestically produced textile goods to be about 5/3 the price of imported items. On this basis, the domestic retail value of the same \$450 million of foreign imported textile goods would be about \$750 million, if they were produced and sold domestically. Therefore, American consumers would have to pay about \$300 million more than they would have spent on the imported items.

Automobiles: Another illustration of the possible impact of quotas is provided by an estimate of what might have happened if automobile imports had been subject to a quota during the last five years—a period during which imports more than doubled. In 1966, imports of foreign-type cars amounted to 651,000 units. If a quota had been imposed limiting the growth in the number of imported vehicles to 5 per cent per year, by 1971 imports could not have

exceeded 830,000. Since the actual level of cars imported was 1,563,000 in 1971, there were 733,000 more automobiles imported than would have been permitted by a quota. If we assume that the total number of cars purchased would have been unaffected by a quota, American producers would have been able to sell an additional 733,000 units.

However, the additional cost to American consumers would have been substantial. As indicated above, the difference in the average price of foreign-type cars and domestic automobiles may be at least \$1,000. Consequently, consumers might have had to pay \$700-\$800 million more for automobiles in 1971 than they actually did. (Again this assumes that the higher prices would not have reduced the level of demand—in actuality an unlikely outcome.)

The conclusion suggested by these examples is clear: quotas or other quantitative limitations on imports are extremely costly to consumers. While they obviously preserve a larger share of our market for domestic producers, the ultimate burden falls on households and individuals whose real economic welfare is diminished.

IMPORTS AND DOMESTIC INFLATION

Not only do imports offer consumers the possibility of lower-priced substitutes, but they also help to dampen increases in prices of domestically produced goods. By introducing added competition, imports may encourage more efficient and cheaper domestic production. Several dimensions of the inflation that has prevailed in the United States since the mid-1960's offer evidence suggesting that imports probably helped to moderate price increases of a number of domestically produced items.

Of course, in reviewing this evidence, one must not overlook the fact that other factors besides the availability of imports influenced price movements in particular sectors. Specifically, supply bottlenecks and domestic price support programs undoubtedly played significant roles. But, on balance, the role of imports apparently was also important in dampening price increases in several segments of the economy.

The evidence can be traced generally in the behavior of a number of components of several leading price indexes during the periods 1964-69 and 1969-71. These data indicate that in the case of wholesale prices, all commodities in the index (WPI) rose by 12.5 per cent in the 1964-69 period. However, price changes among major categories varied widely.

The effects of quota restrictions on the behavior of domestic prices were particularly noticeable in the case of farm products, a category containing a wide range of items subject to quantitative import limitations. For this group, the WPI rose by 15.8 per cent in the years 1964-69. The rise for foods and feed was especially sharp—e.g., meats, poultry, and fish, 31.6 per cent; dairy products, 22.4 per cent. These increases in food prices undoubtedly weighed heavily on the lowest income groups who must spend a proportionately larger share of their income on food.

If we use the components of the GNP implicit price deflator as measures, an even sharper picture emerges. The total index rose by 17.8 per cent in the 1964-69 years. However, among components, the prices of services and structures (for which there are few foreign substitutes) rose much more rapidly than the prices of goods. The advance for services was 21.7 per cent, and the rise for structures was 26.3 per cent. But of more significance, within the goods category, the largest price rises occurred among commodities in which imports could not grow because of quotas.

The same general pattern of price changes is evident in the data for 1969-71. Although the excess demand (generated partly by the

Vietnam War effort) had eased considerably by the close of 1969, domestic inflationary pressures continued.

Again, the influence of imports on the behavior of prices was clear: in general, in categories in which foreign competition was restricted because of quota limitations, prices rose more rapidly than in categories where imports were free to expand.

While we have been focussing on the effects of imports on consumer prices, it is important to remember that imports used as inputs in production may also help to keep down the final price of consumer goods. If producers are able to draw on the cheapest source of inputs (which may come from abroad), then final consumer products can be less expensive.

CONCLUDING OBSERVATIONS

The foregoing discussion should have demonstrated that imports bring enormous benefits to American consumers. The availability of foreign goods broadens the range of consumer choice and also helps to dampen pressures on domestic prices. This conclusion is recognized by most observers—even by those who favor increased restrictions on imports.

However, as I noted at the beginning, the key issue in the debate over import controls turns on the relation between imports and domestic jobs. The evidence presented here clearly shows that foreign trade has a positive effect on domestic employment. Yet, having made this point, I would raise the question of whether a job comparison is the most meaningful way of evaluating the value of trade to the U.S. economy. In one sense, on a job basis one might hope that there were more jobs related to imports than to exports.

This would indicate that we as a nation are exporting those goods where the level of productivity is relatively high, while importing goods of industries where the level of productivity is relatively low. In this way, we would be fostering those efficient domestic industries while importing items produced abroad in industries in which our production is relatively less efficient.

Perhaps a more relevant evaluation of the impact of trade and its effect on employment should be at the aggregate level and the overall improvement to our society in general. If one accepts the proposition that one goal of our society is to provide consumers with an increasing volume of goods and services at the lowest possible costs, i.e., with an increasingly higher standard of living, one also should be prepared to accept goods from foreign sources as well as those produced domestically. In this sense trade is beneficial to the overall growth of employment and output in the U.S. economy. True, there will be structural problems as imports grow and change in composition. But the overall benefit to our society vastly outweighs the frictional and temporary adjustment problem.

In my judgment, higher imports represent a transitional problem to our economy—although a serious one—and we have to seek ways to reallocate our domestic resources so that we will reap the benefits from trade by providing (both to ourselves and countries abroad) those goods and services in which we are most proficient. In this way, we can maintain the strength of our economy by remaining sufficiently resilient and flexible to take full advantage of all the resources available to us both domestically and from the rest of the world. This, of course, is the basis of the principle of international specialization on which the continued and accelerated growth in national and world economic welfare is based.

What must be kept in mind is that the function of exports is to pay, in real terms, for our imports. To the extent that imports involve less real resources (and are thus cheaper in real terms), consumers can obtain more goods than they otherwise could. These savings can be passed on in the form of additional spending, and the stimulative

Footnotes at end of article.

effect of the additional consumer outlays can have a cumulative impact on economic growth and employment.

I do not mean to imply by the above comments that certain industries and individuals are not having serious difficulties as a result of the sizable expansion of imports of finished manufactured goods into the United States in the last 10 years. Obviously certain industries and people do need help. However, restrictions on imports, in my judgment, are simply not the appropriate way to provide this help. Rather, we need retaining, financial benefits, and relocation assistance for labor and other resources displaced by competitive forces (and this includes pressures from domestic sources—such as new technological developments—as well as from foreign competition).

On the other hand, providing new adjustment assistance to affected industries should not be aimed at perpetuating them indefinitely through a government subsidy. Instead, our objective should be to assist the human and other resources involved to move to those expanding sectors of the domestic economy where they can be employed to greater advantage. This may be to other types of manufacturing or to the production of badly needed services in the health and educational areas.

I understand the national Administration is examining the whole question of adjustment assistance and expects to present a vastly revamped program to Congress that would be much more effective than the one presently used. This is a program which all of us should support.

FOOTNOTES

¹ These figures for trade are those used in the balance of payments accounts.

² The BLS estimates of employment related to exports was derived by first determining output generated in individual industries by exports. Through an analysis of input-output relationships, both the primary and indirect outputs generated were calculated. The outputs for each industry were then translated into employment by estimated average output per person (productivity). The employment estimates for each industry were summed to get an overall employment estimate. The estimated average employment per \$1 billion of exports was derived by dividing this employment estimate by the value of exports in 1969.

³ To update the employment estimates from 1969 to 1971 in a rough manner, I relied on the BLS techniques. Two statistics were needed: (1) the change in the volume (real) of exports from 1969 to 1971; this was 6.3 per cent. (2) the change in output per person (productivity) from 1969 to 1971; this was 4.4 per cent. Export employment in 1969 was 2,600,000 jobs; if this number is multiplied by the index of increase in real exports from 1969 to 1971—i.e., 1.063 per cent—and the product is divided by the increase in productivity, the result is the number of 1971 export-related jobs. The calculations for estimating export employment in 1971 are as follows:

- (1) Export employment, 1969, 2,600,000.
- (2) 1971 export volume relative to 1969, 1.063.
- (3) 1969 employment times 1971 volume index [(1) × (2)], 2,763,000.
- (4) 1971 productivity relative to 1969, 1.044.
- (5) 1971 employment adjusted for increased productivity [(3) ÷ (4)], 2,646,000.

⁴ See Andrew F. Brimmer, "Import Controls and Domestic Inflation," a paper presented at the University of Maryland, College Park, Maryland, November 11, 1970.

⁵ It should be noted in passing that, in the last few months, the world price of sugar has risen sharply because of production shortages. Experts on the sugar industry see this

development as a temporary phenomenon which should pass fairly soon.

STATEMENT BY CONGRESSMAN SAM GIBBONS

In June 1970 the American Footwear Manufacturers Association spokesman, W. L. H. Griffin, appeared before the Committee on Ways and Means advocating the imposition of absolute quotas on imports. In response to my questions, Mr. Griffin admitted that in the 1960's—a 10-year period in which he cited the great growth of imports—his company, Brown Shoe of St. Louis, Missouri, had steadily rising profits and that its profit ratio, sales to profits, had steadily increased during this period when imports were supposed to have hurt the industry. Just last month Mr. Griffin announced that Brown Shoe Company's net earnings had increased 8.3% for the fiscal year ended October 30, and that net sales had increased 9.5% to \$505,730,000 for fiscal 1970. Mr. Griffin credited the improvements largely to aggressive and effective marketing of the firm's products, efficient scheduling and manufacturing, careful inventory control and continuing efforts to control all costs rigidly.

Another substantial American footwear producer, Interco, reported this month that net earnings in the fiscal year ended November 30 rose 14.2% over a year ago, on a sales gain of 8.9%. Interco's Chairman, M. R. Chambers, reported that fiscal 1971 was the eighth consecutive year in which the figures exceeded the previous year. I have always had confidence in the American management-union team being able to meet foreign competition, and these facts demonstrate the resilience of our U.S. footwear industry.

I read with considerable interest the *Footwear News* story of November 25, 1971, in which Interco and the union leaders are meeting with the government to reach an agreement on the amount of the increase in wages for shoe workers. I trust that all parties will be cautious in seeking too great a wage increase, for fear that the consequent rise in production cost would price their shoes out of the market. In 1970, a special inter-agency task force issued an exhaustive 122-page report on the U.S. footwear industry. Among its many conclusions was that "import competition has not prevented the industry from raising footwear prices, raising them, in fact, at a faster rate than most components of the price indexes. Moreover, the period of greatest acceleration in price increases was accompanied by the most rapid growth of imports." In another study of the industry conducted by the Federal Reserve Bank of Boston, a significant conclusion, along these lines, was reached. "In fact, many New England shoe manufacturers feel that the major constraint upon the level of their output is not foreign competition, but the high cost of labor in New England."

The *Wall Street Journal* recently, taking note of shoe imports, said that their "major impact has been made principally on the marginal producer." The article noted that other companies have been "able to maintain their relative market positions by diversifying, aggressively promoting branded lines, providing retailers with good in-stock support on reorders, and improving their manufacturing efficiencies."

The Government Task Force Report found an essentially healthy domestic shoe industry and specifically noted that the individual companies with problems were invariably those that were "undercapitalized and vulnerable to conditions in credit and financial markets," or were lacking in design, creativity and sales ability. The overall conclusion was strong and unequivocal: "The facts and information available to the Task Force do not, in its judgment, constitute a case of injury to the overall footwear industry."

[From the Journal of Commerce, Mar. 2, 1972]

DOMESTIC FOOTWEAR INDUSTRY SEES 1972 PRODUCTION RISE

The domestic footwear industry, buoyed by the effective devaluation of the dollar and pinning its hopes on more imaginative styling, sights a rise in production this year, spokesmen for the industry said yesterday.

This would be the first rise in U.S. shoe output since 1968.

The currency realignment has finally reversed the tide of shoe imports, and domestic production of leather and other non-rubber footwear should rise by 5 per cent this year to about 565 million pairs, said Harold B. Gessner, chairman of the American Footwear Industries Association, Inc.

Imports are still rising, but the realignment of currencies has greatly slowed the growth rate, Mr. Gessner, who also is president of Oomphies, Inc., and Mark Richardson, president of the association, indicated.

STYLING FACTOR

Better styling of American shoes both for men and women is at least as much responsible for the comeback, they contended.

The increased emphasis on shoe styling, they said, results from the rising popularity of casual clothes that require or suggest compatible footwear such as fashion boots for women and high heeled shoes for men.

The gains in total shoe sales are being made in the face of rising costs for both labor and material. Costs are expected to go up 10 per cent this year. The Argentine government's limitation on hide exports also is a problem for American shoe makers.

Shoe retailers and manufacturers who retail themselves are pushing their merchandising operations vigorously. One large chain opened 350 new stores last year and plans to open more than 200 this year.

Imported non-rubber shoes cut rapid inroads into the American market in the 1960s, reached 290 million pairs or 32.7 per cent of all U.S. sales in 1971. That represented a gain of 10.4 per cent over 1970, following a 20.5 per cent jump in 1970 from 1969.

[From Footwear News, Feb. 24, 1972]

U.S. SHOE REORDERING PACE UP

CINCINNATI.—Reorders during the first two weeks of February have been running about 20 percent ahead of last year, Philip G. Barach, president of U.S. Shoe Corp., told Footwear News Tuesday.

In an interview following the 10-minute annual shareholders' meeting at the company's executive offices here, Barach said, "I happen to think retailer inventories are low. The fact that Easter is two weeks early this year is a variable, but hemlines are stabilized and the return of good-looking feminine styles bid well for us."

Barach said the company "is still laboring with the shoe retailing area. It's still in a turn-around stage. The next quarterly report will tell a clearer story."

Barach added however, that the Wm. Hahn division "has continued to show substantial growth and earnings strength."

Barach also said that U.S. Shoe domestic manufacturing facilities are running at full capacity.

"If this keeps up we could be in the pleasantly interesting position of looking for more capacity."

He said that no decision will be made until summer and he emphasized that if additional facilities are needed they will be leased rather than built.

At the shareholders' meeting, attended by 16 people, most of whom are officers and directors of the company, Barach said first quarter 1972 sales for U.S. Shoe were up 9.3

per cent and earnings were up 6.9 per cent. First quarter sales amounted to \$85,619,000, compared with first quarter sales of \$78,328,000 for 1971.

Net earnings amounted to \$3,388,000, equal to 50 cents a share, compared with net earnings of \$3,169,000, or 47 cents, for the first period last year.

The 1971 amounts have been restated to include the operations of the Casual Corner of companies of Atlanta and Washington, D.C., acquired on a pooling-of-interests basis subsequent to Oct. 31, 1971.

Barach said the manufacture of U.S. Shoe brands in Spain and Italy has brought about a "tougher mix of shoe which is turning it into a plus for us. We've been able to add styles that we ordinarily couldn't produce here.

PER MAN HOUR FIGURES

"We're in a hedge position," said Barach. "We won't commit to brick and mortar.

"You can't put your head in the sand about imports," Barach said. "This is the way we're trying to meet the competition until there is a voluntary control bill."

Barach said the average wage for shoe workers in the U.S. is \$2.50 an hour, compared to 57 cents an hour in Spain and \$1.40 an hour in Italy.

He said productivity in Spain and Italy amounts to 7 pairs per man hour compared to 10 pairs per man hour in the U.S.

He said imports amounted to about 15 per cent of U.S. Shoe's wholesale sales in 1971 compared to an industry average of about 30 per cent.

In a statement prepared for release at the annual meeting, Barach also said:

Initial orders for advance fall lines have been good and "retailers showed considerable enthusiasm for our lines at the recent New York Guild Show in January.

"We sense an improved tone both in the level of general retail activity and in the reception of all of our lines. This should augur well for continued sales improvement throughout the year, provided the general economy holds firm.

"We are now encouraged that our initial sales objective of exceeding last year by at least 8 per cent is reasonable and attainable. If accomplished, our sales volume for fiscal 1972 would approximate \$360 million."

(Sales for 1971 amounted to \$324 million.)

"The wind now is at our backs," Barach told FN. "At this time last year, it was in our face."

Elected to the 17-man board were Charles E. Carples, executive vice-president of U.S. Shoe's Specialty Retailing division, and Arnold Dunn, corporate vice-president and president of the Marx & Newman division.

They replace Walter Marx, chairman of the Marx & Newman division, and David Falk, retired senior vice-president-merchandising of the Bloomingdale's division of Federated Department Stores.

[From Footwear News, Jan. 20, 1972]

BANKS RATE NE FIRMS A-1

(By Jack Shea)

BOSTON.—The New England footwear manufacturing industry has emerged from three very lean years in good financial shape. That's the opinion of bankers and financiers here, who are positively cheery about the industry—at least on a short-term basis.

They believe footwear companies have produced better managers; are well-financed, which aided the survivors when conditions were at their worst, and know their marketplace better, thanks to greater style involvement. Management has been improved in some cases by undergoing a baptism of fire and in others by adding new people.

At the First National Bank, which of the Boston banks is believed to have the largest number of shoe firms as clients, Henry Allen, vice-president, New England division, said,

"I have only one client I'm worried about; a year ago I couldn't have said that."

Leon Bishop, vice-president of the New England Merchants National Bank, which is primarily financing men's businesses these days, told FN, "We are in good shape and most of our clients are unsecured." Unsecured creditors are considered financially stable enough to borrow without pledging physical assets.

Finance companies, too, like the shoe industry. At James Talcott, Inc.'s Boston office, Arthur V. Duffy, vice-president, predicted better days for the industry. He has not seen an influx of clients and explained that companies which have lost their image as "bankable" risks are Talcott's market.

Finance companies also service young companies struggling to become bankable—but there aren't many of them these days, either, he said.

Moneymen said that even in the hardest of times, profitable shoe firms had no trouble getting working capital at rates based on the particular situation.

Interviews with a cross-section of financiers unearthed only one case where a shoe man is getting prime rate. Mostly, conventional bankers begin at 1½-2 points above prime, and finance companies with unsecured accounts get 12-13 per cent or more.

According to Benjamin Bowden, senior vice-president at the First, part of the optimism is based on "the trouble imports have had recently with deliveries, and a style change-over." A problem with domestic makers in recent years has been "a lack of styling out of footwear, which is necessary, particularly in women's shoes, because shoes are not worn out, they pass out of fashion," he said.

The current situation is not without pitfalls, however.

On secured loans, lenders will take 50-60 per cent of inventories, and 70-80 per cent, higher in some cases, of receivables as collateral.

As several lenders explained, the rash of closings in recent years has glutted the second-hand machinery market with many machine types. Thus the market value of that machinery is lower and less can be advanced against it.

Inventories also, are watched more closely. Stories are told here by rueful bankers who ended up owning stocks which style obsolescence had made unattractive in the wholesale market.

Most lenders relate loan transactions to individual applicants. "I want to know his track record, what he's got, where his market is and what he wants to do," said one.

A second phenomenon, and one, sources said, which demonstrates better management mettle, is a trend to longer collection periods and the response by makers.

Al Hermes, an analyst at Dun & Bradstreet's Boston office, told FN, "Collections have been sticky the past two years, beginning with the credit crunch. Using that as a crutch, many firms are now using their creditors to help finance their business."

Other lenders report a movement to 60-day payments, up from the conventional 30-day period. Others said suppliers and tanners are bearing the brunt of the "waiting game."

Import buying, generally done with money "up-front," together with the money crunch, has further drained retail pockets, thus adding to their liking for longer payment terms, bankers say.

Manufacturers are rising to it, several said. Duffy, at Talcott, said, "Managements now realize the importance of financial controls."

At Green Shoe Manufacturing Co., James Ridge, credit manager, confirmed that his company is taking a more active look at receivables. Several divisions have been computerized recently and a look at the receiv-

ables chart shows "we've remained about constant over the past year or

Herbert Greif, president of the Geo. E. Keith Co., Brockton, Mass., said his company is also taking a more firm position on payments.

Asked to rate retailers as payers, most sources said independents are having the most difficult time paying and, while department stores get mixed reviews, virtually all said discount chains manage to work the maximum time limit from their customers.

There are reports, too, that chains will hold up payment on billing technicalities. One source cited a chain refusing payment on thousands of pairs until an invoice ambiguity involving 24 pairs was resolved.

Still others point to the necessity of complex forms for chains because of the volume and diversity of their buying. "The manufacturers must learn to conform to chain billing procedures," says Bowden at First National.

Despite these problems, manufacturers still like the chains because of the volume bought and because "you know the money is there, you know you are going to get it," said one women's novelty maker.

Inventory control is another area of better management control because manufacturers are learning to take the bit, bankers said.

Merchants' Bishop said, "The alert people always controlled inventories better. Some learned the hard way, but now most are aware of it.

"A man with a \$40 retailer these days who doesn't sell it the first time around, is now selling it for what he can get. He may not make money on it, but he is at least getting rid of it," he said.

[From the Journal of Commerce,
Mar. 3, 1972]

MULTILATERAL ECONOMIC PEACEKEEPING SYSTEM URGED BY NIXON TRADE AIDE

(By Muriel Allen)

WASHINGTON, March 2.—The world needs an international system for stabilizing economic and particularly trade relationships to contain conflicts—a multilateral economic peacekeeping apparatus.

This is the theme of a new book by Harald B. Malmgren, an adviser to President Nixon's special trade representative, William D. Eberle. As the Nixon Administration tentatively explores strategies for proposed 1973 economic negotiations with its major trading partners, Dr. Malmgren believes it is considering the broad gauge approach he recommends to give economic issues top priority in foreign policy.

Dr. Malmgren points out that President Nixon is emphasizing the need for the economic superpowers to enter into an era of economic negotiations equal to the Strategic Arms Limitation Talks (SALT) and other military defense bargaining. A major economic thrust could be launched in May when the President goes to the Russian summit meeting. A full range of trade and investment issues could be raised at that time, Dr. Malmgren believes.

1973 TALKS

The 1973 talks will represent a breakthrough because the Common Market has agreed for the first time to work on agricultural and industrial issues concurrently.

Noting that there are few proposals on how to reform the world trading system, Dr. Malmgren discusses three major areas for negotiation in his book, "International Economic Peacekeeping in Phase II." These are nontariff barriers, tariffs, and the need for a safeguard system "to get people in sensitive industries to go along" with movements toward freer trade.

What can the U.S. Government do to modernize domestic and international economic

policies? Dr. Malmgren argues for a "strong, but very small, staff on the Council on International Economic Policy, the director of which is equal with the director of the National Security Council staff. This group should perform all of the functions required by the President."

The State Department "should be restructured gradually to place functional bureaus above regional bureaus," the book says, and the economic area staffed with a mixture of foreign service officers and civil servants not permanently attached to state, serving the secretary directly.

In handling all matters under international negotiations, the Commerce Department should establish a close working relationship with industry. The Agriculture Department should strengthen relations with farm organizations through a consultative committee.

The Labor Department should appoint an advisory board on world economic policy. These actions would leave the White House free to consider "only the most heated political issues directly," Dr. Malmgren reasons. The staff director of the Economic Policy Council should work directly with the Congress to eliminate current poor coordination between the legislative branch and departments.

Economics should be given "a far higher priority" in terms of time and staffing so that the President and secretary of state are better briefed on relationships between economic, security, and political issues in foreign policy, Dr. Malmgren suggests.

The executive branch could make a major bipartisan effort to secure congressional support for a joint resolution to assist the White House to work out necessary economic long-range reforms, Dr. Malmgren said at a news briefing on his proposals. This would build up confidence at home and in other countries in the U.S. Government's determination to avoid patchwork solutions.

If this country continues a piecemeal approach to monetary crises or trade conflicts, "businessmen as well as governments would continue to be walking through a minefield" threatened by economic explosions, the author warned.

Japan, Europe, Canada and the U.S. "have to be drawn together and enmeshed in multilateral discussions on all economic problems . . ." although implementing reforms "will be a politically painful course. It can only be accomplished if politicians see that they must play a major supporting role."

This will require changes in previously sacrosanct national economic policies, especially agriculture, Dr. Malmgren said.

Economists agree the recent monetary crisis means that the broken down international economic system has to be replaced. Dr. Malmgren believes officials in key capitals are close to consensus on how to reconstruct that system. He emphasizes that trade liberalization alone will not be meaningful, and that work on lessening industrial and agricultural trade barriers must parallel monetary reform.

Dr. Malmgren points out that there will always be quotas to protect sensitive industries and that government's will never completely stop intervening in trade matters because of political considerations.

But the economist stresses the crucial importance of a new strategy for nontariff barriers into which nations policy decisions would be fitted. . . .

[From the Journal of Commerce, Jan. 4, 1972]
U.S. PHOSPHATE ROCK PRODUCERS UNITE TO
EXPAND EXPORT FIRM PRICES

(By Al Wyss)

Faced with intense competition both in this country and overseas, a number of major United States producers of phosphate rock are taking steps to act as a combined force to

hold and expand export markets and to obtain better prices.

Under the Webb-Pomerene Act, five major U.S. producers, accounting for about three-fourths of U.S. exports, are negotiating all export contracts as a group through the recently formed Phosphate Rock Export Association (Phosrock). The companies belonging to Phosrock—namely American Cyanamid, Conoco, W. R. Grace, International Minerals & Chemical Corp. and Occidental Chemical Co.—expect to reap a number of advantages from their association, including reduced marketing expenses, bigger export volume, lower freight rates and better, or higher, prices because of increased negotiating or bargaining strength.

Exports of Florida phosphate rock are estimated to have totaled over 12 million tons in 1971, valued at about \$88 million.

An export association has been critically needed by the U.S. industry, a leading supplier in world markets, second only to Morocco. Competition in the U.S. for the last several years has been severe, fed to a great extent by overproduction and overcapacity, with the result that export prices have come down sharply as the various U.S. producers continually cut prices in order to take business away from one another. As a result prices of the 10 to 12 million tons of phosphate rock exported in recent years came down from about \$7.00 a ton in 1966 to a little over \$5.00 per short ton, f.o.b. mine, in the past year.

OVERSEAS COMPETITION

Moreover, competition from overseas phosphate rock producers has been tough and is likely to get tougher as production is expanded and new production comes on stream, such as in the Spanish Sahara.

Despite this increasing foreign production, phosphate rock produced in Florida, which accounts with North Carolina for about 83 per cent of U.S. output and most of this country's exports, is still one of the best lowest cost sources in the world for this raw material. Most of the phosphate rock produced in Florida is used in fertilizers.

Production of all marketable phosphate rock in the U.S. in 1971 totaled about 38.0 million short tons valued at \$203.7 million. Exports of Florida phosphate rock as reported by the Bureau of Mines for the first nine months of 1971 were approximately 9.2 million tons valued at \$66.1 million. Shipments were made to 32 countries with Japan, Canada, West Germany, and Italy receiving 57 per cent of the total.

The newly formed and still not fully organized association already has achieved encouraging results by negotiating big contract sales at prices which show a better return. A sales contract was negotiated for the shipment of substantial tonnage of Florida phosphate rock to Latin America. Even more recently, a contract was negotiated by Phosrock calling for increased tonnage to Europe.

In negotiating such contracts, Phosrock is attempting to restore all or at least some of the price cuts which took place in recent years because the level to which prices sank showed a very low return and for some producers a loss.

William W. Chadwick, president and chief executive officer of Phosrock, pointed out that the association is just getting organized. Although it was technically organized about a year ago, it only started marketing operations after Conoco joined the group last July. It is expected that Phosrock will be fully staffed and organized by next July.

Mr. Chadwick, who is on loan from International Minerals & Chemical and has had extensive experience in export sales of phosphate rock, will set up headquarters at Tampa, Fla.

Aside from the elimination of price-eroding competition among the five U.S. pro-

ducers, Phosrock will improve profit margins for the firms involved by combining overseas marketing activities, Mr. Chadwick pointed out. The association also is expected to secure better freight rates because of the more substantial volume handled by Phosrock, making it a more important customer to ship lines.

The association will be able to offer a much larger and varied line of phosphate rock grades for overseas customers.

The big problem the years ahead will involve rising world production as output is expanded and new mines come on stream. One of the biggest new suppliers will be the Spanish Sahara which is expected to come on stream within the next few years, with an initial production of about 3 million tons, still relatively modest compared to the U.S.

Production in the Spanish Sahara, however, is expected to rise to about 10 million tons in the following several years. In addition, expansions are planned by Russia, Tunis, Egypt, Israel, Algeria and other countries. Some of these are relatively small individually but in the aggregate the increased output could have an adverse impact on world markets and prices.

As one industry official recently said: "If an industry ever needed an export association this one really does."

An adverse impact upon the competitive position of the Florida industry in the world market place also is expected to result from the State of Florida's mineral severance tax which took effect July 1, 1971. This tax will be 3 per cent on the mineral value through 1973, going to 4 per cent through 1975 and to 5 per cent thereafter. A tax credit, not to exceed 25 per cent of the tax paid, will be allowed for reclaiming mined out areas and current mining areas.

Phosrock will, moreover, be in a more advantageous position to meet intensifying competition from foreign producers which is likely to develop as mines and production in other countries are expanded and new mines come on stream.

Mr. Chadwick points out that U.S. producers could face serious problems in the future because of the nature of overseas competition. Practically all overseas production is either government-controlled or owned jointly by governments. Frequently, such suppliers will sell in world markets for badly needed foreign exchange or political reasons, regardless of the profit or economic factors involved.

On the other hand, it is also to the advantage of such producers to obtain as good a price as possible for their product to build foreign exchange.

Major producer and exporter is Morocco which has a definite advantage in selling to European markets because of the freight rate differential.

The U.S. industry, however, does have a number of plus factors working for it, including its efficient low cost production and the high quality and variety of its product. In some countries quality is relatively poor and deposits meager.

And more recently, supply and demand in the U.S. appears to be coming into better balance, following a number of years of excess capacity.

[From the Journal of Commerce, Jan. 5, 1972]

ON THE RIGHT TRACK

Those in and out of the government who are seeking ways and means of increasing American exports could do worse than study what five major producers of phosphate rock are doing to accomplish that very thing on their own hook. They are taking advantage of the little-used Webb Pomerene Act to establish a joint force in the export field.

An article by Al Wyss in this newspaper yesterday explained how and why this action

is being taken. As an export product, Florida phosphate rock has been encountering bruising competition from that of Morocco and soon will face more from sources in the Spanish Sahara. Prices have been forced down to a level that makes it very difficult to market U.S. phosphate rock in Europe by traditional means, especially when the relatively high costs of shipping that commodity across the Atlantic are taken into account.

What the producers felt they needed was a single organization that could negotiate with foreign buyers, with overseas ship operators and reduce export prices by paring their marketing costs. No two or more of the five companies are allowed by the antitrust laws to agree on prices and trade practices with respect to sales in the domestic market. But the Webb-Pomerene Act permits them to do so with respect to foreign sales so long as their organization is properly registered with the Department of Justice and provides the government with regular reports on its activities.

There is, however, something curious about the Webb-Pomerene Act and the uses to which it has been put. It was passed just after the First World War as a means of enabling American exporters to meet the competition they had previously experienced and expected to experience again from the large cartels of Great Britain, Continental Europe and Japan.

So this statute—a relatively simple affair as antitrust legislation goes—has been in effect for more than 50 years. In some lines of business export associations have formed under its protection and functioned for varying periods, one of them involving lumber and another plywood. But most of the participants in these associations have been relatively small companies. The larger forms of business enterprise have tended to shun Webb Pomerene. They have done so for what strikes them as a good reason.

The Justice Department's Antitrust Division has never had much enthusiasm for exemptions from antitrust prosecution contained in various federal laws (the Interstate Commerce and Civil Aeronautics acts provide other examples), and in the years following the Second World War let it be known on several occasions that not only was it less than enthusiastic about Pomerene, it thought it should be repealed. Without ever saying so directly, the department managed to convey to all who would listen the dark suspicion that any firms in the same line of business who got together on export prices and practices would simultaneously seize the opportunity to discuss the same subjects in relation to the domestic market.

This message was not lost on the nation's major exporters. They read it as meaning that those who grouped together in export associations, no matter how legal, could expect to find their activities at home subjected to very severe scrutiny indeed. Even a firm doing its utmost to comply with every stricture of the antitrust laws tends to avoid this kind of inspection, if possible. After all, it can always make mistakes. So can the Department of Justice. Why court harassment unnecessarily when in most cases the export business at stake is only a fraction of the business generated by the big home market?

Why indeed? But there are circumstances under which a more general resort to Webb Pomerene might develop. The stage would be set for this if the department would indicate that it is now taking a more relaxed view of these matters and that a company joining in a Webb Pomerene export association won't find itself automatically made the object of the department's deepest suspicions and probes.

Will that be the case? Some of the members of the new Phosphate Rock Export Association are highly visible on the American business landscape: American Cyanamid,

Conoco and W. R. Grace. These are not small business firms in any sense of the word and the assumption must be that they are going into their Webb Pomerene venture with their eyes open. If their operations prove a success we wouldn't be surprised to find that they will have emulators. But much, as we say, will depend on the attitudes of the Department of Justice.

Everyone knows that the United States must find some way of increasing its exports if it is to clear up its balance of payments deficits by means that won't court another depression. The President has already made one key move in this direction by devaluing the dollar. A greater resort to Webb Pomerene export associations could provide another. It won't work miracles, but it would make more sense to us than some of the other incentives we have heard proposed—among them the use of export subsidies.

IMPROVED WORLD TRADE POSITION FORESEEN FOR METRIC AMERICA

MARCH 16, 1972.—Today in Washington Rep. Sam Gibbons (D-Fla.) called for an end to bushels and pecks. "The metric system is just plain common sense," said Gibbons. "We are handicapping ourselves economically by clinging to what were originally only makeshift units of measurement."

Gibbons has just introduced legislation to establish a national policy relating to conversion to the metric system over a ten-year period. "Americans have been dragging their feet on this issue since the days of John Quincy Adams," Gibbons pointed out. "We must take action now."

"Our balance of trade has taken a disastrous turn for the worse," Gibbons continued. "Metrication will improve our world trade position by increasing our competitiveness in two ways. First, our products will be more acceptable in foreign markets if they are made to generally recognized standards and measurements. Our export market is almost totally metric. Second, using the metric system would improve productivity at home, many businessmen believe."

"Even more important than improving our trade position is preventing it from deteriorating," Gibbons went on. "We must act now to make sure that we are not left out of international negotiations to establish world-wide standards. It is estimated that within 10 years a complete set of product standards will be agreed upon. U.S. standards are unquestionably superior in many, many areas."

"But if we don't speak the common international language, metric units, we will be unable to fight for international adoption of our standards. They will be set in our absence."

"The question is not whether the U.S. will go metric, but how and when. We are already partly on the metric system. In 1970, 10% of manufacturing in the U.S. was carried out by firms employing metric standards to some extent, and the percentage has increased since then. Over 90% of producers in both manufacturing and non-manufacturing industries questioned in an exhaustive Department of Commerce study expressed themselves in favor of conversion to metric units. The cost should be low: the pharmaceutical industry, for instance, which has already converted reported the total cost as 0.05 of 1% of value added by manufacture. We must establish a national coordinated policy framework to facilitate our producers' changeover."

"The U.S. has been debating the pros and cons of metrication for 200 years," Gibbons concluded. "Meanwhile, the issue has been decided throughout the world. Today the U.S. is the only major trading nation with no official commitment to the metric system. Surely it is time to conclude our lengthy

deliberations, to unite production in this country in a single system of measurements, and to move at once towards a metric internationally competitive America."

Mr. CULVER. Mr. Speaker, I welcome this opportunity to join the dialog on "Constructive Alternatives to Protectionism." This is a matter of central concern to the Congress and more specifically to the Foreign Affairs Subcommittee on Foreign Economic Policy. I should like to take this opportunity to acquaint Members with an initiative we are taking in this field. On March 1 of this year I introduced with 80 cosponsors a concurrent resolution on the subject of trade adjustment assistance in relation to our foreign economic policy. This resolution (H. Con. Res. 546-549) has been referred to my subcommittee and will form the foundation for informational hearings starting April 24. At a later date we will release further details on these hearings, including the scope and nature of the questions on which we will be seeking testimony. At this time I would like to review the background against which the resolution has been introduced.

Mr. Speaker, many Members of this House and of the other body have expressed concern in recent months about foreign trade disadvantages being experienced by American firms and workers. Some have pointed to unfair trade practices engaged in by foreign companies and governments, which have gone unchallenged by the Executive. Others have suggested that root difficulties are to be found in our domestic economy, through lack of vigorous competition and declining innovation and productivity. A major debate is shaping up on the degree of trade expansion we need or can afford, and how best to promote the interests of industry and labor and the consumer. There is dispute in Congress—as there is among the affected groups, both about the facts of the matter and about their significance.

But there are a few facts on which a substantial consensus does appear to be emerging. One is that the concerns being voiced by labor and management in the affected sectors of our economy are real concerns, and cannot be ignored or swept away by resort to conceptual slogans, whether of "free trade" or "protectionism." Another is that at least one of the remedial concepts to which we have paid lipservice, and partially embodied in legislation—namely, trade adjustment assistance—has been employed so ineffectively and inadequately in practice as never to have been given a meaningful test. Still a third fact which few deny is that to the extent the United States reacts unilaterally in the world arena to trade problems and stresses, we risk incurring political losses so serious as to endanger our country's security and well-being.

These at least are among the tentative conclusions derived from a series of hearings held last year by the Foreign Affairs Subcommittee on Foreign Economic Policy, which I chair. We examined successively the economic impact of enlargement of the European Common Market; the international implications of President Nixon's new economic pol-

icy; and the state of our politico-economic relationships with our two major trading partners, Canada and Japan.

Our own efforts with regard to internal conversion assistance as a constructive alternative to aggressive mercantilist practices or protectionism dating back to the 1962 Trade Expansion Act, are virtually stillborn. The criteria used for adjustment assistance have been so difficult to meet—on occasion even self-contradictory—and the procedures so cumbersome that in the past decade only two firms have ever received any substantial assistance from the Government. I ask leave to have reproduced at the close of my remarks an article from the Wall Street Journal of December 8, 1971, entitled "Promises, Promises," which documents the failings of this program.

Nor does the record of the European Common Market to date seem very much better. Regional and social assistance were included as goals of the Rome Treaty, and funds have been allocated for relief of distress in the coal and textile industries—which have declined in employment by roughly 50 and 25 percent, respectively, since adoption of that treaty. But the level and sophistication of assistance have been nowhere near adequate, it appears, to relieve chronic underemployment in regions like southern Italy, and the outlay for economic conversion has been totally dwarfed by expenditures to subsidize inefficient farming operations under the community's common agricultural policy.

Thus, both domestically and internationally, there appears to be a pressing need for examination of workable schemes for economic conversion as an alternative to destructive trade wars. If our farmers and coal producers are more efficient than those in Europe and Japan, that efficiency should be recognized in access to export markets. By the same token, if firms and workers in other sectors of our economy fall behind their foreign competitors in efficiency, they should have available to them a meaningful and effective array of alternative investment and employment opportunities.

Mr. Speaker, I am not so naive as to expect that economic conversion assistance alone can prove a panacea to all our trade problems and perplexities. Other remedies, both bilateral and multilateral, will no doubt have to be employed from time to time, at least in the short term, to counter genuinely unfair practices by foreign governments and industries. We do not in fact know how much help we can expect from a workable economic conversion program, because we have never had one. Nor do we know how much of our economic conversion needs are attributable to trade pressures, as opposed to other factors operating within our domestic internal economy such as shifting technology and changes in the priorities of Government programs. We do or should know that our country and its constituents—workers, investors, and consumers—along with the peoples and governments of other friendly lands, would be better off if we had answers to these questions.

It is to stimulate the exploration for those answers that I have introduced, in company with 80 cosponsors, a concurrent resolution expressing the sense of the Congress regarding the importance to our foreign policy of devising effective measures of trade adjustment assistance. With leave, I ask that the text of this resolution together with the names of the cosponsors be printed at the close of my remarks. I must say that I have been very gratified by the depth and breadth of support from my fellow Members for this initiative—extending as it does to representatives of both parties from all regions of the country. It seems obvious that we share a conviction about the importance of examining this subject.

And 1972 is the year in which to do that. Discussions among governments are now underway to prepare for a possible new round of multilateral trade negotiations to commence next year. This year is also scheduled to witness the completion of the ratification process for enlargement of the Common Market. And the executive has let it be known that it plans to submit no new trade legislation to the Congress this year. We can thus use this year to lay a solid informational and analytical foundation for the legislative consideration that is bound to be called for in 1973. In that context, I am hopeful that the concurrent resolution we have introduced will be both useful and pertinent.

H. CON. RES. 546

Concurrent resolution expressing the sense of the Congress regarding steps to strengthen the foreign policy of the United States through measures relating to the domestic economy.

Whereas, in an increasingly interdependent world no longer dominated by the actions or authority of a few superpowers, the United States needs a foreign policy that will foster sustained, effective, and consistent relationships with other countries, based on sober assessments of long-term mutuality of interests; and

Whereas an international economic posture for the United States that looks beyond immediate issues to a workable pattern of worldwide fiscal trade, and investment cooperation is essential to such a foreign policy; and

Whereas the ability of the United States to maintain an effective, long-range, and consistent foreign policy has been and remains periodically subject to disruption as a result of stresses felt by various sectors of the United States economy from foreign trade disadvantages; and

Whereas the experience of other nations in pursuing adjustment policies and devising mechanisms to deal effectively with similar stresses and dislocations may have pertinence for appropriate United States policy in this field; and

Whereas presently available means of adapting the United States economy to such stresses have been ineffective and inadequate and are in need of reexamination: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that domestic policies which promote the economic strength of the United States are a necessary prerequisite to the effective implementation of a consistent and constructive foreign policy in the 1970's and beyond; and that the United States Government should exert every effort to examine and prepare workable, responsible, and efficient measures to promote the legitimate interests of American workingmen, consum-

ers, investors, and business in order to be able to carry out a foreign policy which will promote the national interest and the achievement of balanced and stable world relationships.

PROMISES, PROMISES: FIRMS HURT BY IMPORTS, ASSURED OF HELP IN 1962, FIND IT TOUGH TO GET—SO FAR, ONLY TWO RECIPIENTS WIN FEDERAL AID INTENDED TO ENCOURAGE FREE TRADE—THE PLASTIC PIANO SITS SILENT

(By John Pierson)

WASHINGTON.—At stake, it would seem, is peace, prosperity, free trade and nothing less than the future of the plastic piano.

You see, Estey Piano Co. of Union, N.J., and Bluffton, Ind., has been badly hurt because the government agreed to lower the tariff that kept the price of foreign-made pianos high. So the government agreed to help Estey design a less expensive plastic model, which would make the company competitive again, to help keep Estey in business until the new piano was ready and then to help produce it.

Now, after a considerable outlay of time and money all around, the government has changed its mind. Estey has laid off its 100 workers and put its factory—situated in Indiana—up for sale. (There's only an office in New Jersey.) The fate of the plastic piano is in doubt. Says Estey President Robert Mehlin, whose family has been making pianos for six generations: "We have been very seriously injured by this whole thing."

What has happened to Estey is symptomatic of what has happened to a program enacted nine years ago that was supposed to be free trade's answer to protectionism. Let us cut tariffs, free-traders told business and labor, and we'll help you adjust to the inevitable flood of imports. For workers, the help was to come in the form of extra unemployment benefits, retraining and relocation money. For companies, the law specified loans, technical advice and tax breaks to help them modernize present product lines or move into new ones.

ONLY TWO GOT HELP

Nearly a decade after enactment of the Trade Expansion Act of 1962, U.S. imports have doubled, thousands of workers have lost their jobs and hundreds of companies have been hurt. While many workers have been getting benefits, only two companies—a shoe manufacturer and a producer of barber chairs—have received any substantial assistance from the government. Another shoe company has been told it will get help.

This failure of the government to make good on its promise to business can only swell pressure for new protectionist moves, free trade advocates fear. This year the Nixon administration has imposed a 10% import surcharge and has won an agreement limiting Asian shipments of synthetic and woolen textiles—atop earlier restrictions on cotton textiles and steel. If new U.S. import restraints should follow, free traders foresee higher prices for American consumers and added bitterness between the U.S. and its trading partners.

For the first seven years after Congress passed the law, the Tariff Commission was the villain of the piece. From October 1962 to October 1969, 13 industries, eight individual companies and six groups of workers asked for help but were turned down by the commission. In November 1969, after a change in membership, the commission began interpreting the law less strictly; it ruled that the piano industry had been injured by imports resulting from tariff cuts.

Since then, two other industries (flat glass and barber chairs), 17 individual companies and 64 worker groups have passed the injury test, either through yes votes of the commission or through tie votes that President Nixon has broken in favor of assistance. The latest to qualify are Bibb Manufacturing Co., a

textile maker based in Macon, Ga., and 1,000 of its workers and former workers.

SO WHAT HAPPENED TO ESTEY?

The Labor Department has certified some 20,000 workers for extra unemployment benefits. But of the 18 injured companies that so far have applied to the Commerce Department for relief, one has been denied help, two have received loans, one has been promised a loan and 13 applications are pending; Estey, which once was authorized by the Commerce Department to obtain a loan, is getting only technical assistance.

Here's what happened to Estey.

In February 1970, two months after the Tariff Commission ruled that the piano industry was injured, President Nixon gave piano makers temporary "escape clause" relief from tariff cuts and made them eligible to seek adjustment assistance.

In March 1970, Estey asked the Commerce Department for permission to apply for help. In June 1970, after determining that Estey was indeed among the injured of the industry, Commerce Secretary Maurice Stans declared the company could submit an aid proposal.

During the next nine months, Estey, the department, a management consultant hired by it, and the Small Business Administration worked out a package that included a \$90,000 grant and a \$2.6 million loan. The grant was technical assistance for building a prototype plastic piano and for a study to make sure there was a market for the new product. The loan was for paying off Estey's prior creditors, financing continued production of wood pianos until the plastic one was ready and building a new plant.

BIG PLAY FOR STORY

Last March, Secretary Stans certified that Estey's proposal was "reasonably calculated materially to contribute to the economic adjustment of the firm" and "authorized" the grant and loan. A Commerce Department press release heralded Mr. Stans' action. Newspapers in New Jersey and Indiana gave the story big play.

In April, Edward Killam, then director of the department's trade adjustment assistance division, wrote Estey's creditors that the government money "will be available to liquidate obligations of the firm . . . including any obligations which may exist to you."

Under the law, once he has certified a company's adjustment assistance proposal, the Secretary of Commerce first asks the Small Business Administration if it wants to make the loan and the Economic Development Administration if it wants to make the grant. If either agency says "no," then the Secretary "may" provide the help himself.

In May, the EDA said it was willing to give Estey \$90,000 for the prototype piano and the market study. Then things began falling apart.

In July the SBA said it was "deferring" action on Estey's loan. Until the prototype and the study were successfully done, the SBA said, there was no "reasonable assurance"—as required by the law—that Estey could repay the government. Commerce Department sources suspect that the SBA simply preferred to have the department risk its own money.

Meanwhile, Mr. Killam had been replaced as director of trade adjustment assistance by Lewis Kaufman, former Los Angeles partner of Goldman, Sachs & Co., an investment firm. Mr. Kaufman viewed the program somewhat differently from Mr. Killam. For example, he felt that no funds should go to pay off prior creditors. As he saw it, the program was meant "for the economic adjustment of firms, not as a creditors' relief act."

Bothering Mr. Kaufman, too, was the fact that some of Estey's creditors were also principal stockholders. Although Estey's proposal stipulated that the stockholders would wait

for their money until the government got its money back, Mr. Kaufman says he still worried that the loan would go to "bailing out" stockholders rather than revitalizing Estey.

So despite Mr. Stans' March authorization, despite the Commerce Department's press release, despite Mr. Killam's letters to banks and other creditors, the department joined the SBA in deferring action on the \$2.6 million loan.

And in September, it refused a request from Estey for enough money to keep going until the prototype was built and the market study completed early in 1972.

Late in September, Mr. Mehlman told a Senate Commerce subcommittee that the department had a right to change its mind about the program, but he argued that once Secretary Stans had approved Estey's proposal, "he should certainly live up to that commitment."

Harold Scott, Assistant Secretary of Commerce for domestic and international business, called the Estey case "unfortunate." According to Mr. Scott, trade adjustment assistance had "languished as a relatively inactive feature" of his department, handled mainly "at the staff level."

FROM CHAIRS TO CABINETS

Mr. Mehlman said he was closing his plant in Bluffton and laying off his 100 workers, many of them experts who would be hard to replace if and when the plastic piano went into production. But he now says he'll try to persuade his creditors to hold off and not force Estey into bankruptcy. With the help of the EDA's \$90,000 grant, he's going ahead with the prototype and the market study. He still believes that the new piano has "terrific" potential, and he hopes, one way or another, to prove it.

While Estey was having its ups and downs, 17 other companies were applying for help in adjusting to imports. Two have received it.

In September 1970, the SBA loaned \$2 million and guaranteed a private loan of another \$2.1 million to Emil J. Paidar Co. of Chicago, a maker of barber chairs. The loans were to help Paidar diversify for moving into production of dental cabinets, too. The EDA has provided \$22,000 of technical assistance.

Paidar used the loans to begin work on a new plant, but Paidar President John Diouhy says he now wants to sell the new plant and acquire another company that makes dental cabinets. So he's asking Commerce for an additional \$3 million.

And early this year, the SBA loaned \$1.4 million to Benson Shoe Co. of Lynn, Mass. The EDA provided \$200,000 of technical assistance, and the Commerce Department gave tax aid in the form of an extra two years of net operating loss carryback.

VARIOUS STAGES OF SUSPENSE

Benson President Philip Kaplan says government aid has allowed him to reorganize management, production and sales methods. Volume has doubled with only 20% more help. "To us the program has been good," says Mr. Kaplan.

Both these loans included funds to pay off creditors, a standard SBA practice. Both were made before the Commerce Department got adjustment assistance money of its own. Thus, the SBA had to decide the issue for itself, unlike in the Estey case.

Now that it has its own money, the Commerce Department has just agreed to lend \$662,000 to help breathe new life into Louis Shoe Co. of Amesbury, Mass. The EDA will kick in \$100,000 of technical aid.

Meanwhile, 13 other companies are in various stages of suspense. Some submitted their aid proposals months ago and are waiting anxiously for a response. "I just hope they can get us the assistance in time," says Victor Pomper, president of H. H. Scott Inc., a Maynard, Mass., producer of hi-fi equipment.

A few companies have gotten past the Tariff Commission but are still waiting for Commerce Department permission to apply for help. Robert Bretzfelder, president of Kra-kauer Brothers, a New York City piano maker, says that every time he sends department officials some figures to prove that his company has been injured, "they ask for more figures." This has been going on for half a year. "If a company was really on the brink of going out of business and had to wait this long, they'd be out of business," he says.

Commerce officials deny it, but these delays may have had something to do with the resignation last month of Mr. Kaufman, the adjustment assistance director. "There have been some suggestions that things happen faster," Mr. Kaufman concedes. "Maybe my problem is that I'm used to dealing with large, successful companies and not with small, unsuccessful ones."

But clearly there are other obstacles to winning trade adjustment assistance. The requirements for proving injury are so tightly written that few companies to begin with get by the Tariff Commission. After that, the procedure for getting help is so complicated that only a few have received it. Division of the authority for dispensing aid permits apparent buck-passing, as in the Estey case.

There may be a basic inconsistency in the law's requirements that companies must be "seriously" injured to be eligible for help and give "reasonable assurance" of repayment. By allowing companies working capital to pay creditors and meet other current expenses only in "exceptional" cases, the law holds little hope for firms like Estey that are on the brink of ruin.

Recently, President Nixon's Commission on International Trade and Investment Policy recommended a number of reforms in adjustment assistance. Among other things, it said one agency should be responsible for operating the program and there should be easier loan terms. Going further, it is urged the government to anticipate import adjustment problems and identify industries most likely to be hurt.

LIST OF COSPONSORS

James Abourezk (S. Dak.).
Bella Abzug (N.Y.).
Brock Adams (Wash.).
John B. Anderson (Ill.) R.
Thomas Ashley (Ohio).
Les Aspin (Wis.).
Nick Begich (Alaska).
Jonathan Bingham (N.Y.).
Edward Boland (Mass.).
Richard Bolling (Mo.).
John Brademas (Ind.).
Jack Brooks (Tex.).
Herbert Burke (Fla.) R.
Phillip Burton (Calif.).
James Corman (Calif.).
John Davis (Ga.).
Ronald Dellums (Calif.).
Edward Derwinski (Ill.) R.
John Dow (N.Y.).
Robert Drinan (Mass.).
Pierre du Pont (Del.).
Don Edwards (Calif.).
Frank Evans (Colo.).
Dante Fascell (Fla.).
Thomas Foley (Wash.).
William Ford (Mich.).
Donald Fraser (Minn.).
Peter Frelinghuysen (N.J.) R.
Sam Gibbons (Fla.).
Gilbert Gude (Md.) R.
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Michael Harrington (Mass.).
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James Howard (N.J.).
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Arthur Link (N. Dak.).
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 Lloyd Meeds (Wash.).
 Abner Mikva (Ill.).
 Patsy Mink (Hawaii).
 William Moorhead (Pa.).
 Bradford Morse (Mass.).
 Charles Mosher (Ohio) R.
 John Moss (Calif.).
 Morgan Murphy (Ill.).
 Lucien Nedzi (Mich.).
 David Obey (Wis.).
 James O'Hara (Mich.).
 Claude Pepper (Fla.).
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 Richardson Preyer (N.C.).
 Thomas Rees (Calif.).
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 Robert Steele (Conn.) R.
 Louis Stokes (Ohio).
 James Symington (Mo.).
 Frank Thompson (N.J.).
 Morris Udall (Ariz.).
 Jerome Waldie (Calif.).
 Charles Whalen, Jr. (Ohio) R.
 Lester Wolff (N.Y.).
 Sidney Yates (Ill.).
 Gus Yatron (Pa.).
 Clement Zablocki (Wis.).
 John Zwach (Minn.) R.

Mr. FRENZEL. Mr. Speaker, in the year immediately following World War II, the U.S. dominance of international trade was almost total. Ours was the only significant industrial complex which emerged from that war that was not only intact, but improved. So strong was our economy, and thus our currency, that at the Bretton Woods Conference the dollar became the standard of international exchange.

During the immediate postwar period, U.S. technology and production facilities were so superior that other nations were forced to establish restrictive barriers in the form of tariffs, quotas and other types of limitations in order to allow their own domestic industries to grow. Their products and services needed protection before they could become competitive. If not actually encouraging these barriers, the United States did little to prevent them from being established.

Since the end of the war, in the intervening 25 years, our economic and trade dominance has declined. Some of the reasons are that the European and Japanese economies have revived, that the technologies of other nations have caught up, that the policy of establishing trade restrictions, both tariff and nontariff, was expanded, that our burden of international defense spending did not shift in proportion to the increasing economic viability of other nations and, perhaps most of all, that our Government and our people remained largely passive in the highly competitive international trading game. Our decline was such that in 1971, for the first time in my lifetime, and in that of most of the Members here, our country showed a negative balance of trade.

We will never again, and perhaps

never want to, regain the international economic dominance which we enjoyed 20 years ago, but there are steps we can take to improve our lagging international stature.

In recent weeks we have heard much discussion on the merits of protective legislation, specifically the Investment Act of 1972, more commonly known as the Burke-Hartke bill. This legislation is well intended, and perhaps in the short run might be helpful. But the long-term effect of establishing rigid barriers for further imports and limiting U.S. participation in foreign markets will undoubtedly eliminate many more jobs and further our relative economic decline.

There are many alternatives to protectionism. Some changes can be effected which will allow for an immediate improvement in our international trade balance. Important negotiating strides have been made toward reduction of certain of the quantitative barriers which the European Community has imposed on agricultural products and other products as soybeans, oranges, juices, and arrangement with Japan for such products as soybeans, oranges, juices and quality beef. Additionally, the United States and the European Community have communicated to the Director General of GATT their desires to review and to negotiate improvements in all areas of international trade. The stated desires for cooperation will hopefully bring more favorable trade arrangements for U.S. producers which in turn will create more job opportunities for U.S. citizens. Had the Congress expressed a strong desire for more restrictive trade regulations, we undoubtedly would not have been able to negotiate favorably with any other nation in the world.

Though there are some offices, and certain individuals in our Federal Government, who are actively working toward a more favorable export climate, many exporters still find resistance within our own Government, particularly in trade relations with the Eastern European nations. The only large trade market in the world which has not been fully tapped is the Eastern European market.

Though the 1969 Export Administration Act eliminated some of the barriers, Commerce Department approval for sales in eastern Europe is laboriously slow. Commerce ought to be seeking advice from appropriate elements of government when authorizing such sales, but the ad hoc, poorly structured nature of the Interagency Committee, which reviews these contract proposals, has proven to be cumbersome and in many cases have placed U.S. manufacturers at a serious competitive disadvantage. I represent an area which includes several of the major computer products manufacturers. The continuing cutbacks in aerospace and defense have limited the existing domestic markets for these firms and have limited their ability to concentrate funding on important research and development. By opening the eastern European nations for the sale of nonstrategic equipment, without transferring any of the basic technology, the vigor of a domestic industry and the availability of U.S. jobs have been further enhanced.

In the past few months I have been made aware of two instances where producers of computer products have been able to find markets in east European nations and have eventually been given Commerce Department clearance, but not before being delayed for what I feel was an undue amount of time. The delay in both instances jeopardized the sale for which both Japanese and British manufacturers were also bidding. I would urge that the Commerce Department review, with the intent of streamlining the procedures by which these approvals can be granted.

If the Burke-Hartke bill has a strength, it is the desire to tighten the restrictions on dumping and on the countervailing duties. While the United States may never match some of its foreign competitors in the types of financial and promotional assistance it provides for exporters, we can at least work to eliminate many of the anticompetitive actions of foreign governments which allow their manufacturers to undercut the prices of domestic products, which force American producers to either produce cheaper goods or get out of the market.

I would also urge a greater use of adjustment assistance for the domestic industries and firms which are put at a competitive disadvantage with foreign competitors. Though Commerce now has the statutory authority to provide this assistance, it has been reluctant to exercise this authority. This inaction has caused the affected industries to further retrench and has strengthened the cause of protectionism. While every U.S. citizen should feel that he has a right to a job if he is actively seeking work, we do not necessarily have the legislation to provide him with a job in the same industry which provided jobs for his father and grandfather. If the United States is to regain its technological superiority and thus preserve a vibrant economy and job climate, it is vital that our energies and resources be committed to new and innovative ideas and industries.

One of the unfortunate fallacies which has arisen from the current debate is the theory that the multinational firms have been exporting jobs as they have established facilities abroad. While there may be instances of jobs which have gone abroad, the evidence which I have seen has conclusively proved that the multinational firms have produced many more U.S. jobs which are dependent on their foreign activities. If protectionist legislation is passed, I am confident that many of the multinational firms will be forced into flight from the United States and the job availability in this Nation will be further weakened.

The Congress should fully consider any legislation which would affect our foreign trade. In my judgment, we will err grievously if we attempt to preserve the product mix, the trade balance and the trade partners which typified our international involvement in the decade of the sixties. By such action we will lose forever the ability to ever again compete on equal terms in international markets.

We must demand equality from our trading partners, assistance from our

Government, better technology from our trading companies and improved productivity from our work force. Our long-term well being depends in part on our ability to compete internationally. Protectionism only means we have resigned from international competition.

Mr. FRASER. Mr. Speaker, there is increasing concern over the continuing, chronic high rate of unemployment in the United States today. Roughly 5½ million people are out of work. Ten years ago, during the last period of high unemployment in our country, the scapegoat was automation. Today it is rising imports and the growth of multinational corporations. The unemployment situation improved in the sixties, without adoption of any of the then popular proposals to restrict automation. It improved because of expansionary Federal fiscal and monetary policies. If jobs are to be found for all, similar policies are needed today, combined with effective anti-inflation measures. We must not repeat the fatal error of Smoot-Hawley, an error that helped precipitate the Great Depression. The proffered cure of import quotas and restrictions on overseas investments could be disastrous. We must keep international trade channels open—remove restrictions, not impose new ones.

Only a tiny percentage of the 2 million persons who were put out of work last year lost their jobs because of foreign competition. But whatever the cause, we must do something to help these unfortunate people over the difficult transition period of retraining for a new job and possible transfer to a new locality. Ideally, we should do something to help all displaced workers, no matter what the source of their unemployment. However, sometimes we have no choice but to approach problems piecemeal. Because our past trade adjustment assistance program has proved of little help to workers who have sorely needed that help, I would like to discuss today a new, effective program that could aid workers and at the same time alleviate pressures for restrictive trade measures.

Let me trace briefly the origins of the current system of trade adjustment assistance and the reasons for labor's disenchantment with it. In the Trade Expansion Act of 1962 the President sought authority to reduce tariffs by as much as 50 percent. Adjustment assistance provisions were offered as a conciliatory measure to labor but were so hedged with restrictions as to prove virtually useless. The Ways and Means Committee, in reporting the bill, expressed the purpose of the adjustment assistance provisions for workers in this fashion:

Their displacement will be the price of the national gain from expanded trade and in those cases where it would be inappropriate to assist these workers and their employers by increasing tariffs or otherwise restricting imports, they should be helped to adjust to the new international competition—to become able to enjoy its benefits themselves.

This was a praiseworthy objective, but the words proved empty ones.

A Department of Labor report on the adjustment assistance program for workers under the Trade Expansion Act points out that there has been "tacit

acceptance by organized labor that adjustment assistance was a chimera and the requirements of the law could not be satisfied." As Frank V. Fowlkes pointed out in the October 9 edition of the *National Journal*—

Workers and firms, who were reluctant to accept the assistance program as a substitute for protection to start with, have been frustrated by delay, red tape and rejection.

From the passage of the act in October 1962 until November 1969, the Tariff Commission denied every petition submitted to it by workers, firms, and industries. Only after the Automotive Products Trade Act of 1965 had shown that adjustment assistance was practicable, did the adjustment assistance program under the Trade Expansion Act begin to function at all.

Under this act, an affected firm, industry or group of workers has to show to the Tariff Commission's satisfaction that: first, an increase in imports has resulted from a trade agreement concession granted by the United States and, second, that this increase in imports is the major cause of the injury suffered. An affirmative finding on the part of the Tariff Commission provides the basis for Presidential action. The President, in turn, authorizes the petitioning of firms and industries to apply to the Secretary of Commerce, and the petitioning of groups of workers to the Secretary of Labor, for assistance.

Such assistance under the 1962 act is further restricted by the requirement that the worker must have been employed for from 1½ to 3 years prior to separation. Payments are 65 percent of the average weekly wage, or of the average weekly manufacturing wage, whichever is less. Benefits continue for a year after separation, or for an additional half year if the worker is undergoing training. Because the process is lengthy and unwieldy, in the few cases where such assistance has been granted, it has generally been retroactive, paid in a lump sum, long after the adjustment has been completed. Retraining for all practical purposes has been lost in the shuffle; actually it should be the prime focus of the whole thing since an "adjustment" to the changed economic situation is the objective.

The Automotive Products Trade Act of 1965, which provided assistance to workers who lost jobs because of the United States-Canada auto agreement, eased the criteria of eligibility. Petitioners no longer had to show that the changed trade situation had been the major cause of their displacement, but only a primary cause. They could also qualify for assistance if injury had occurred because of declining production for export. Under this act the Tariff Commission was relegated to the status of a factfinding body, and determination of eligibility rested with the President.

Under the Automotive Trade Products Act, 21 workers' petitions were filed for adjustment assistance. Fourteen of these were granted, and some 2,000 workers received payments totaling more than \$4 million, of which, however, only \$61,000 went for retraining. This act expired in 1968.

It was not until November 1969 that

the very first petition for adjustment assistance under the Trade Expansion Act of 1962 was acceded to by the Tariff Commission, 7 years after enactment of the legislation. Small wonder that labor has lost faith in a program of trade adjustment assistance. From November 1969 to March 1971 of 66 petitions for assistance filed by groups of workers, the four-man Tariff Commission found evidence of injury in 16 cases. It divided evenly on 20 cases, and it found no injury in nine cases. The President found in favor of the workers in the 20 tied decisions. Thus, 29 out of the 66 groups of workers who have applied have been certified eligible for assistance.

A 30th favorable decision was reached this January when the President decided to permit firms and workers in the marble and travertine industry to apply for trade adjustment assistance. One of these firms is the Vetter Stone Co. of Kasota, Minn. The determination in this case was, wisely, not to increase tariffs on finished marble and travertine, but to seek the elimination of tariffs on all unfinished and some semifinished marble and travertine imports. This move will lower costs for domestic producers and let them adjust genuinely by competing more successfully against foreign bidders. U.S. employment in producing finished marble products will probably thus be increased.

My distinguished colleague, the gentleman from Wisconsin (Mr. ASPIN) and I have introduced the Workers Readjustment Assistance Amendments of 1972—H.R. 13854—which would improve the machinery of granting assistance and make such assistance easier to obtain. This bill would make the following changes in the current program:

First, new machinery would be set up to administer the program. Twelve regional councils would replace the unresponsive Tariff Commission. The Secretary of Labor would appoint to each council three members from labor, three from industry, and three from the public sector. These councils would determine the eligibility of workers for assistance.

Second, workers would have to show that unemployment or underemployment had been brought on by an appreciable increase in imports or by an appreciable decline in production for export. Under current law an increase in imports has to be shown to be the major cause of injury.

Third, the requirement that the increase in imports causing injury must arise from a trade concession would be dropped.

Fourth, the 1½- to 3-year employment requirement prior to separation would be shortened to 1 year. The existing provision discriminates unwisely against new labor force participants. They are the workers least protected by other means. They have no seniority and no claim to separation pay and are thus in the most need of assistance.

Fifth, payments would be increased to 100 percent of average weekly wages and would continue for 1 year, or a year and a half if the worker were undergoing retraining.

Sixth, relocation allowances would no longer be limited to heads of families. As the law now stands, it does not offer help

to youthful workers who may want to transfer away from a hopeless employment situation.

Corresponding legislation is also needed to speed up procedures and liberalize criteria for assistance to affected firms and industries.

I wish to emphasize, Mr. Speaker, that current economic troubles do not stem from foreign trade competition. International trade makes up only 8 percent of our gross national product. Moreover, recent studies have made a strong case that the number of jobs lost because of changes in exports and imports has been minimal—only 16,600 from 1970 to 1971—and that U.S. investment overseas has actually increased employment overall here at home. Five thousand of the 40,000 employees of the 3M Co., owe their jobs directly to international operations. Minneapolis Honeywell has had 5,000 jobs created in the United States because of exports, jobs that would not otherwise exist.

In the long run, our future prosperity and the peace of the world depend upon an enlightened system of multilateral, nondiscriminatory trade. In the short run, however, workers caught in the existing unfavorable situation should be helped. The right way to deal with legitimate grievances of domestic industries is through adjustment assistance, liberalized and speeded up to help when the help is needed—when workers are laid off and not many months later. Labor has been disillusioned too long by the assistance they have been unable to obtain under the Trade Expansion Act of 1962. We must show them that such assistance is possible, now.

Mr. CORMAN. Mr. Speaker, since 1962 the U.S. trade policy has been moving steadily away from the liberal trade approach which has characterized it since 1934. The Trade Expansion Act of 1962, which had overwhelming support in Congress, led to the Kennedy round of trade negotiations. Yet, since 1962, quantitative restrictions on imports, including "voluntary restraints" by foreign suppliers, has risen to the point that the liberalizing effect of tariff cuts in the Kennedy round has been reduced.

Several arguments have traditionally supported a liberal U.S. trade policy in the post World War II era:

By exchanging goods which we can produce most efficiently for goods which can be produced more efficiently by others we will improve our economic growth and national wealth.

Imports can help to alleviate the problem of inflation and can help to maintain necessary competitiveness among U.S. industries.

Consumers are given a wider choice of goods at lower prices.

Discrimination against the United States is reduced among foreign economic groups such as the Common Market and the European Free Trade Association, thus protecting our exports and acting as a disincentive for foreign investments by American firms.

On balance, free trade creates jobs in this country by the need for more labor to produce exported goods.

It is apparent now that if no action is taken to reverse the present momen-

tum on trade restrictions, we can only look toward further erosion of our traditional freer trade policies. We need to explore the possibilities of stemming such erosion.

On February 11, this year, the U.S. trade negotiators, principally the Secretary of Commerce and his advisers, and representatives of the Common Market Community, stated jointly that multilateral discussions would start early in 1973 with the aim of erasing existing barriers to trade, particularly the non-tariff trade barriers. Canada and Australia have already indicated that they are eager to join such discussions in the light of their peculiar Empire preference, as these were affected when Britain joined the Common Market. The United States is now actively seeking the support of other major trading countries for such a trade conference.

During the last few weeks the urgent problem of our trade deficit has been discussed here at length because of the drastic "quota" law that has been introduced to minimize the harmful effects of excessive imports of like or competitive products.

It is evident, however, that the whole question of protectionism has arisen due to the fact that certain basic industries have had to contend with excessive imports, not only undercutting U.S. prices but also causing widespread layoffs and closing of plants. This has led to strong statements that only a "quota" law could be the remedy against such injurious imports.

But such protectionism is not the answer. There are constructive alternatives. My colleague, the Honorable SAM GIBBONS, has taken the lead in stating that freer trade has benefits for all and that restricting our import trade not only will upset the U.S. traditional free trade philosophy but will invite retaliation from our trading partners. Not only will such restrictive action reduce consumer choice of available articles, but it will undoubtedly raise the prices of domestically produced goods. A hard and fast proposal to restrict imports is just not the answer.

I wish to associate myself with the views of Mr. GIBBONS that there are constructive alternatives to protectionism. I believe that the American consumer should have the final say as to his choices. It is up to us to help prevent the protectionists from building a fence around the American market. While there is certainly a need to protect U.S. commerce from unreasonable import restrictions or other policies which discriminate against U.S. trade, a viable case cannot be made that restricting imports would really protect the jobs of American workers. I am optimistic that with devaluation, removal of trade barriers, additional export expansion incentives, wider participation in export drives and governmental credit and insurance programs, we will be able to generate at least 750,000 new jobs in foreign trade in the near future. And none of these programs is restrictive of imports.

The proponents of "protectionism" may say that this is an optimistic appraisal. But, according to the Bureau of Labor Statistics, using 1969 figures, about 2.6 million jobs could be attributed to

the \$37.5 billion of exports of merchandise in that year. Thus each \$1 billion of exports generated 69,000 jobs. To this total one could actually add another 69,000 supporting jobs in related industries. In 1971, the estimate is that about 66,000 jobs are generated for each \$1 billion worth of exports. It seems obvious that the more we push the export trade, the more our employment will rise.

In the aggregate, export employment accounts for about 4 percent of total private employment. But actually, in some important sections of the country, the employment ratio is far higher. In agriculture it is 9 percent, in manufacturing 7 percent, in construction machinery it rises to 27 percent, engines and turbines 15 percent, office and computing machines 13 percent, and aircraft 14 percent.

On the other hand, it is far more difficult to estimate the domestic employment related to imports, because we assume theoretically that these imports were produced in this country. Naturally, imports may be absolutely necessary to our manufacturing industries. Here, using BLS figures, it was estimated that in 1969 approximately 2.4 million people were engaged in import and related activities.

I would also like to stress another factor which is often minimized, namely that by introducing added competition, imports may encourage more efficient and cheaper domestic production.

All in all, higher imports into the United States during the last few years represent a transitional problem in our economy. With realignment of our national resources, with a wider assistance program to those individual companies that are in difficulties due to various causes, and above all, with a concerted effort by our thousands of smaller companies that have not yet even tried to sell in foreign markets, we can stabilize our international trade in such a way that our exports can show a growing surplus, our consumers get the best prices on goods, and our overseas trading partners will continue their long-established associations with us.

In any discussion of the U.S. free trade concept, one other factor concerns me deeply—and that is that our liberal trade policies since World War II have been in a large sense an important component in our foreign policy. Our exports were essential to the reconstruction of Japan and Europe and an essential corollary to the Marshall plan and to our later technical assistance programs to developing countries. It is evident that our trade policies have, and will continue to have, a strong impact on the overall foreign policy of the United States. If we permit our trade programs to become protectionist, we turn our back on the world. We then begin the road back to the isolationist policies of the earlier years in this century, and thus lose our influence in being an effective force for world peace.

Beyond the consumer who is helped through importation of certain goods; beyond the creation of jobs a non-restrictive trade policy would provide; beyond the prospective increase in our gross national product and additions to our national wealth, this country's role

in the keeping of world peace—often minimized—is reason enough why this country must clearly continue to follow the road of a liberal trade policy.

Mr. UDALL. Mr. Speaker, I want to congratulate the gentleman from Florida (Mr. GIBBONS) for initiating this educational series of discussions on the Nation's trade policies. Few subjects are so important and so dimly understood.

The relative merits of free trade policies and protectionism have provided this country with one of its most persistent debates. Yet all too infrequently has that debate emerged from academia and officialdom and entered the world of those most affected by the outcome—consumers.

Such an unusual public debate on the trade issue was sparked 3 years ago in Arizona when the Agriculture Department—bowing to the pressures of domestic growers—issued a marketing order severely limiting the import of Mexican tomatoes into my home State. My investigation of that incident led me to write an essay which has bearing on current arguments being made for and against protectionist legislation.

The essay follows:

PROTECTIONISM VERSUS FREE TRADE: THE GREAT TOMATO RHUBARB AND OTHER WAR STORIES

"The United States reached a turning point in its life as a nation when Congress overwhelmingly approved the Trade Expansion Act. By its action, Congress rejected economic isolationism and the status of a second-rate economic power for the U.S. It accepted the challenges of competing at home and abroad with the world's toughest competitors. It accepted the responsibilities of Western leadership." Columnist Sylvia Porter in the 1963 World Book Year Book.

This congressman and the Department of Agriculture are locked in a struggle right now—a struggle which may be just an opening round in a broad new war between domestic producers and consumers. Historically this is a kind of war in which consumers finish last.

At issue at the moment is a new order, printed in the Federal Register January 4, which sets new and higher standards for tomatoes sold in interstate commerce. Behind it is an attempt by tomato growers in Florida to reduce competition from tomato growers on the West Coast of Mexico. Since the Mexican tomatoes are generally vine-ripened, whereas Florida tomatoes are shipped green, a careful writing of the new regulation has had the effect of keeping a substantial portion of the Mexican product off the U.S. market. The Department of Agriculture acknowledges its new marketing order, drafted by the Florida Tomato Committee, will cut Mexican tomato shipments by 20%. Growers and shippers say it will be somewhere between 30 and 50%.

Since U.S. imports through Nogales have made it one of the principal points of entry for this Mexican produce, this restriction can have dire effects on many of my constituents, on the economy of Santa Cruz County and—perhaps most importantly—on U.S. relations with Mexico, our important neighbor to the South.

What's more, this kind of import restriction—and let's call it exactly what it is—can result in the adoption of similar protectionist or retaliatory measures by other nations. In the case of Mexico this could mean the loss of many more U.S. jobs than would be gained for agricultural workers in Florida. The reason: we sell far more goods to Mexico than Mexico sells to us. In 1967

we sold Mexico \$1.2 billion in goods while spending \$749 million on Mexican imports; this has been the consistent pattern for years. Some Mexican officials are already talking about retaliating by buying farm machinery in Europe rather than the United States.

The angry reactions of my Nogales constituents and others to this new trade barrier recall the protests of 3½ years ago when the United States reduced the amount of liquor which could be brought back, duty free, from other countries. Our neighbors in Nogales, Sonora, are still reeling from that blow engineered by bourbon distillers in Louisville, Kentucky, and other centers of domestic liquor production.

Tomatoes and liquor—these are but two small items in a growing debate over foreign trade policy in this country. Already we have seen major efforts mounted in Congress to restrict imports of steel, textiles, meat, dairy products and numerous other commodities claiming a need for protection from foreign competition. Arizona is involved in many direct and indirect ways. Some examples which cross my desk:

A Cochise County rancher, resenting the import of Australian beef which, he says, competes with American-grown beef and drives down the price, demands a lowering of beef import quotas.

A pack bag manufacturer who does part of his manufacturing in Arizona and part in Mexico protests U.S. textile import quotas which limit the number of finished pack bags he can bring back into this country.

A stockholder in U.S. Steel writes me to do something about the increasing imports of German and Japanese steel, which he believes will cut into sales of American steel products.

An Arizona firm seeks help from this same congressman in nailing down a \$750 million contract to supply iron ore pellets to the Japanese steel industry and, simultaneously, asks the U.S. government to prohibit an American group from investing money in Australia for development of iron ore to supply the same Japanese market.

Arizona cotton growers, enraged by President Nasser's false charges against our country during the Middle East War, ask me to cosponsor a bill denying cotton import quotas to nations having severed diplomatic relations with us—namely Egypt and the Sudan. I cosponsor such a bill. It passes but is vetoed.

Arizona's industrial development leaders urge manufacturers to establish "twin plants" along the Mexican border, employing Arizona labor for a part of the production, cheaper Mexican labor for the remainder. They see this form of enterprise as a great boon to Arizona's industrial growth and as the answer to competition from countries having significantly lower labor costs, such as Taiwan and Japan.

An Arizona newspaper tells the story of a plant in Flagstaff which was forced to shut down because it couldn't pay the federal minimum wage of \$1.60 an hour. Out of work: 33 Navajo Indians. The explanation: competition from Taiwan and Mexico.

Who can say where the answer lies? Would Arizona be helped by import restrictions—on both beef and tomatoes? Would we be better off with free trade, to encourage "twin plants," or limited trade, to help foster Indian employment in Flagstaff? Is it better to permit beef imports which make hamburger cheaper for Arizona housewives, or to restrict them for the benefit of Arizona cattlemen? These are complex questions which have no simple answers. But I think it's important to realize that, just as we see import restrictions from many points of view in Arizona, people in other states also have their special problems and their special, and often conflicting, points of view. Since this is one nation, and not 50, the job of the President and the Congress is to arrive at policies which

are of greatest benefit to the nation as a whole. And as a congressman I see my job as striving for a delicate balance between contending interests in my district and between the interests of my district and of the nation as a whole.

For Arizona and the nation one must ask: where will all this lead? What are the implications of protectionism and of free trade for our economy, for domestic wage levels, employment and unemployment, the stability of the dollar and our role in world affairs?

ARGUMENTS FOR TRADE RESTRICTIONS

One of the most outspoken opponents of free trade in this country is O. R. Strackbein, chairman of the Nation-Wide Committee on Import-Export Policy. He sees the U.S. economy as terribly weak and shaky, unable to meet the challenge of competition from abroad. To those who might have imagined that competition was the great strength of our economic system his words may come as something of a shock. Here is what he wrote in a statement which just crossed my desk:

"The competitive weakness of this country makes our economy stand like an island plateau against the pounding waves and tidal flows that beset it from all sides. The natural sequence will be a leveling process that will continue, unless it is halted, until we are level with the sea."

Those who view our position in this light argue that the lower wages paid in other countries inevitably will result in a drop in the production and sales of the same commodities and products turned out in this country. In the end, as they see it, our standard of living will be reduced or our industries will wither and die.

To these people the "reciprocal trade" concept introduced by President Roosevelt in the 1930s was a terrible mistake, and the Trade Expansion Act of 1962 was a disaster. The latter set the stage for negotiations, just completed last year, to reduce the tariffs we assess incoming products and pay to ship our products into other countries. Prompted by the severe competition of the European Common Market, that act—which, as your congressman, I supported—gave authority to the President to reduce existing tariffs by 50% in exchange for concessions from other nations, and to eliminate tariffs on those products where the United States and Common Market countries dominated world trade. As a result of the so-called Kennedy Round of negotiations many of those decisions are now history, and others are awaiting congressional action on what is known as the American Selling Price (basically, a "temporary," "infant-industry" protective tariff established for benzenoid chemicals after World War I and left untouched to this day).

Without doubt tariffs are the most effective device for stopping imports. But this tactic is no longer available for most commodities. Protectionists are now turning to non-tariff barriers especially import quotas. The import quota says to Japan, for example: we won't tax the steel you ship in, but we'll limit your imports to so many million tons per year. The size regulation on Mexican tomatoes is another form of non-tariff barrier. The effect is the same—to lessen competition and prop up domestic prices. Through pressure on Congress to enact such quotas industry groups hope to do indirectly what they can't do directly through tariffs. Presumably domestic producers benefit, but domestic consumers pay more for what they buy.

As the protectionists see the situation, any gain realized by consumers in the form of lower-priced goods can only be a short-term advantage because ultimately their own income and jobs will suffer. Scratch a consumer, they say, and you'll find someone whose income is derived from U.S. production. Anything that threatens U.S. produc-

tion of any commodity or product threatens U.S. consumers, too.

Mr. Strackbein states this case very clearly. In answer to those who say we can meet the threat of foreign competition through cost-reduction and modernization of plant facilities he says:

"Also, no one should deceive himself that significant cost-reduction is a mild operation. In terms of employment it is harsh and drastic. We have a classic example in coal mining. In the mid-'fifties this industry was moribund because of encroaching competition from diesel oil, natural gas and imported residual fuel oil. The only hope of survival lay in cost reduction. The objective was indeed accomplished by the introduction of machinery that supplanted men in a gargantuan ratio. The coal industry saved itself but the cost in coal miners' jobs was two out of every three. Employment dropped at a dizzying rate, falling from 480,000 to 140,000 or less in fifteen years. The problem known as Appalachia was a direct result. The cost of relief and inhuman misery was 'unthinkable' and had it been appreciated ahead of time, would no doubt have been avoided as intolerable."

In other words, he believes we should not have modernized the coal industry, not made it competitive with coal production in other countries, but rather subsidized the coal industry in order that it could continue to employ 340,000 men it no longer needed. The implications of this philosophy for an economy that prides itself on its efficiency and competitiveness are rather startling if you think about them.

Significantly, I think, this is not the position of most American industries, of the U.S. Chamber of Commerce or the American Farm Bureau Federation. However, it is the position of many segments of the economy insofar as their own industries are concerned. In other words, many of these groups favor the principle of free trade—but not for their industry. They're happy to lower or eliminate trade barriers on everything else, but they see a desperate need to restrict the import of German bicycles or Swiss watches or English shoes. It's like being against all Federal spending except that in your own state. And it is from the special appeals of many such segments in our economy that the campaign for new trade restrictions has taken shape. The danger is that, acting out of concern for their own special problems, these industry groups, combined, might succeed in turning back the clock in our country's trade relations.

Turning back the clock could mean a return to the protectionist days of the Smoot-Hawley Tariff of 1930. That act, a reaction to the stock market crash of 1929, not only shut off imports but reduced our exports—through reprisals—to a mere trickle. Coming at the very start of the depression that rash act robbed us of hundreds of thousands of jobs just when the economy was least able to handle such a loss.

ARGUMENTS AGAINST RESTRICTIONS

Ever since the mercantile days of Adam Smith and his *Wealth of Nations* in 1776 there has been one matter on which nearly all economists have agreed: that nations benefit from free trade and are harmed by high tariffs. Yet protectionism remained for nearly 200 years as the prevailing rule in world trade. Only in the years since World War II have we seen any significant departure from this pattern. The big breakthrough, of course, was the tariff-lowering arrangement known as the European Economic Community, or Common Market. The huge advantages accorded members of the Common Market in trade among themselves made it a virtual necessity that the United States take steps to improve its competitive position; the Trade Expansion Act of 1962 was the result.

Old ideas don't die quickly, however, and we're now seeing a reaction set in. The old

protectionist arguments are being paraded anew, and I think it's important that we weigh the counter arguments:

Trade that is essentially free increases each trading nation's standard of living. This is so because goods tend to be produced by the most efficient producers in each country. For any given level of manpower a greater supply of goods and services can be made available for the enjoyment of the people that would be the case if inefficient producers were kept in business through trade barriers.

Protectionist fears arise from a totally impossible eventuality—a situation in which a nation would import vastly more goods than it sold abroad. But, basically, goods are paid for with other goods; goods are the currency of international commerce. Increased imports ultimately require increased exports, and vice versa. Commerce is impossible without something close to a balance between the two. Thus, the number of jobs lost through imports will always be balanced in the main by the jobs gained through exports.

Unrestricted trade increases the real income of workers in trading nations. First, through the pressures of competition it forces each nation to strive for its greatest efficiency, to produce those goods which it can turn out at the greatest economic advantage to itself; thus, there is a need to get the greatest production out of each worker, and through this heightened efficiency there are the means to increase wages. Secondly, the availability of less-expensive goods (take, for example, the superb Japanese cameras you can buy today at really modest prices) makes the income of workers go farther than ever before.

The ready availability of imports serves as a check against inflation. When demand outstrips supply, the normal result is an increase in prices, often detrimental to producer and consumer alike. The importation of goods from abroad (provided they're not blocked by tariffs or quotas) can avoid such inflationary situations. And, of course, the steady competition from foreign goods will force our economy to reduce costs and hold down prices, thereby relieving the pressures of inflation.

From the foregoing you may sense that I am a "free trader." I tend to be, as does President Nixon. However, I believe every situation relating to our trade with foreign countries deserves careful analysis: I'm willing to acknowledge that an occasional justification can be made for temporary restrictions on the import of certain goods. The maintenance of industries capable of meeting our needs in time of war (when foreign sources may be cut off), the encouragement of new industries having the potential for real competitiveness at a later date—situations of this kind make sweeping generalities hazardous and broad principles subject to occasional exceptions. And that's why Congress will spend so much time this year talking about the problems of so many segments of our economy—about dairy products, textiles, steel and all the rest.

HOW STRONG IS OUR ECONOMY?

Behind the drive for new trade restrictions is the fear that our economy can't stand the test of international competition, as Mr. Strackbein so dramatically stated. Let's take a look at this economy which is so weak and fragile:

Between 1959 and 1967 steel imports rose by 7 million tons. But in the same period U.S. steel production rose by 34 million tons and employment in the steel industry increased by 24,000 jobs.

In 1960 the per capita, after-tax, spendable income of the U.S. population was \$1,883 expressed in terms of 1958 dollars. On the same basis per capita, after-tax income is now \$2,473—a gain of close to \$600 in just eight years.

In 1960 we had total civilian employment of 66 million. Today we have 76 million jobs—a gain of 10 million jobs in eight years.

In 1960 we had 3.8 million unemployed. Today, after adding 20 million people to our population, we have only 2.8 million unemployed. Our unemployment rate of 3.6% is among the lowest in the world. Some even argue that it's too low.

In 1960 our total national product in durable goods was worth \$81 billion, expressed in 1958 dollars. In 1968 our durable goods production had risen to \$124 billion—a gain of 53% in eight years.

In 1960 our total product of non-durable goods was \$60 billion. Last year it stood at \$82 billion—a gain of 37% in eight years.

Our Gross National Product in 1960 was \$503 billion, compared to \$861 billion in 1968. Expressed in 1958 dollars, the 1960 total was \$487 billion, the 1968 total \$707 billion—a gain of \$220 billion. That gain, discounting the effect of inflation, is equivalent to the total 1960 national product of the entire Common Market—Belgium, France, Germany, Italy, Luxembourg and the Netherlands—plus Austria, Denmark, Norway, Portugal, Sweden and Switzerland. That's not our total product—that's just what we added in eight years.

I should think that anyone, reading these figures, would see in them signs of a very healthy, strong and competitive economy. These are not products of protectionism; they're the result of increasingly free trade, marked by declining trade barriers through this eight-year period. To see this economy as one about to be leveled by international competition is, in my judgment, like seeing the New York Jets last month as a team on the verge of collapse.

BUT WHAT HAPPENED TO OUR TRADE SURPLUS?

Some of the fuel for this year's trade debate will come from recent statistics showing a sharp drop in our traditional foreign trade surplus last year. Here are some quick figures:

1959: Exports, \$16.4 billion; imports, \$15.6 billion; surplus, \$.8 billion.

1960: Exports, \$19.6 billion; imports \$15 billion; surplus, \$4.6 billion.

1967: Exports, \$30.9 billion; imports, \$26.8 billion; surplus, \$4.1 billion.

1968: Exports, \$33.8 billion; imports, \$33.1 billion; surplus, \$.7 billion.

The 1968 surplus was actually \$726 million, a drop from the expected \$1 billion surplus. Protectionists undoubtedly will see this as the beginning of the end unless the dike is plugged fast.

Just as one game doesn't make a season, one year doesn't make a trend. The Commerce Department attributes the 1968 decline to strikes and strike-threat situations in steel, copper, and aluminum, and to a boom in the domestic economy making possible the purchase by consumers of more foreign luxury goods, especially automobiles, and including "American" cars made in Canada. Imports represented 3.8% of our Gross National Product, compared to 3% in recent years—still a very modest figure.

It is also helpful to note that our trade surplus in 1959 was just \$789 million, yet a year later it had bounced back to \$4.6 billion. In any case, most economists consider it important only that there be a reasonable balance between exports and imports; there is not great advantage to big surpluses. In fact, any surplus means some other country or countries will have a deficit—and thus a net loss of jobs. It's unreasonable, in their view, to insist that the United States *always* have a surplus and its trading partners, taken as a block *always* have a deficit.

OTHER TROUBLESOME QUESTIONS

Even though every U.S. President since Franklin D. Roosevelt has favored tariff reduction, and even though that has been the policy of this country since passage of the Reciprocal Trade Agreement Act of 1934, protectionists still argue that free trade will re-

duce our wages, working conditions, living standards and profits to the levels of our poorest trading partners. Countering these arguments is not easy because international trade is such a poorly-understood subject. These are some of the questions raised:

1. It's immoral to buy goods from nations with substandard wages. We ought to use trade as a weapon to force other countries to raise wage levels.

2. Cheap foreign labor will produce unemployment in this country. Charity begins at home.

3. High wages in this country, held up in part by the minimum wage laws, make it impossible for us to compete with cheap-labor countries.

Trade advocates see little merit in these arguments. They answer:

1. Since the world's resources aren't distributed evenly, trade is an absolute necessity, not only within the borders of individual countries, but between countries. How else could non-agricultural countries survive? How would a one-crop economy, producing only coffee, or rubber, feed its people? History shows that the more nations engage in trade, the higher are their standards of living. Without trade they couldn't possibly advance. Higher wages cannot come from production for which a country is not suited.

2. As long as exports and imports are essentially in balance, as many jobs are gained as lost. If exports are in surplus, as they traditionally have been for the United States, there will be a net gain in employment.

3. How could there be exports at all if lower wages always gave the foreigner an advantage? The truth is that lower cost, not lower wages, determines competitiveness, efficiency, availability of resources and other factors are often far more important than wages in determining prices.

F. W. Taussig, a Harvard economist, answered these arguments some years ago when he wrote:

"In the United States by far the most common and most effective argument in favor of protection is that it makes wages high or enables wages to be high. With many persons it is an accepted article of faith that American wages can be kept high, and the American standard of living can be maintained, only if there is protection against the goods made by the cheaper labor of other countries. . . . This fear of universal leveling rests on ignorance or misunderstanding of the causes that lead to the differences between countries in money wages, in prices, in general prosperity. . . . None put forward in favor of protection are more specious and widely held, none are more fallacious."

THINGS TO WATCH FOR

As the new Nixon Administration gets to work on the many problems facing this country you may want to watch for indications of the President's position on some of these foreign trade issues. Here are the major ones:

Tariff-cutting authority under the Trade Expansion Act of 1962 expired June 30, 1968. President Nixon may ask for an extension of that authority permitting him to take new initiatives in reducing tariffs.

Congress last year failed to act on President Johnson's proposal to eliminate the so-called American Selling Price system, a post-World War I tariff which gives special "infant industry" protection to our giant chemical industry. The Johnson Administration agreed to seek repeal of the ASP in exchange for tariff concessions by other countries. President Nixon may or may not abide by that commitment; if he does, he may face difficulties from congressmen and senators having large chemical plants in their states.

During the campaign President Nixon said he had sympathy with some of the temporary measures proposed to prevent excessive imports of such products as textiles and steel.

However, he said last week he opposes import quotas. It will be interesting to see how he responds to mounting pressures from industries seeking such relief.

YOUR THOUGHTS ARE WELCOME

In this report I have tried to present as complete a picture as possible of the foreign trade debate that is shaping up in Congress this year. I have tried to depict for you the kind of situation I face as your congressman—a situation in which I must represent both producers and consumers, both those who seek import restrictions and those who stand to benefit from the free flow of foreign imports of various kinds. I intend to keep trying to do the best job I can of representing all of you.

As I indicated at the outset, producers tend to carry more weight in these debates than consumers. I expect that will continue to be true, not because it's right but because producers of steel, textiles, chemicals—and Florida tomatoes—are better organized and can bring greater pressure to bear on the decisions of government. As a consumer and/or producer you can sit back and watch as the show begins, or you can become part of it. I'll welcome your views.

MORRIS K. UDALL.

Mr. SYMINGTON. Mr. Speaker, I would like to add my voice to those here today calling for us to seek alternatives to protectionism as a solution to our trade problems. Not only does construction of protectionist barriers to foreign trade invite retaliation through enactment of similar measures by our trading partners abroad, but it would seriously undermine the international cooperative efforts to alleviate the crisis in the international monetary system attempted at the Smithsonian in December.

Many words have recently been spoken against the protectionist forces at work among us. Erza Solomon, a member of the Council of Economic Advisers, in remarks made before the American Management Association in February, attacked the notion that "severe protective moves will create jobs." Mr. Solomon noted that the very jobs which our exports created will be eliminated when we stop importing. Further, Mr. Solomon states that the protectionists ignore that fact that "the average job created by shutting off imports is far less economically productive than the average job lost by an evaporation of export markets."

Mr. Solomon maintains that—

The best argument against this line of reasoning is a letter written 150 years ago by a French economist. He wrote in behalf of the fictitious Candlemaker's Society of Paris appealing to the French Government to board up all windows, because the light from the sun, available too cheaply, was competing unfairly with the employment of poor hard-working candlemakers who would otherwise be enjoying a boom in the manufacture of their products. He even pursued the argument further, if only the windows could be boarded up, then the large boom in candlemaking would spread its benefits over the rest of society when the people employed spent their wages and profits buying goods and services from the rest of France.

Clearly the answer for the U.S. is not in that direction but rather in the opposite one. As other nations master the art of producing the older products like textiles (200 years old), steel (100 years old), and cars (60 years ago), it is up to the more technologically advanced societies like the U.S. to create new markets in new products that

embody new technologies. We have played this game very successfully for 80 years and there is no reason whatever to believe that we need to be less successful at it in the decades ahead.

Another interesting speech encouraging the United States to seek alternatives to protectionism to improve our balance of trade was delivered recently before the 12th Annual Conference of the Containerization Institute by Robert M. Norris; Mr. Norris is the president of the National Foreign Trade Council. It is his conviction that we should try to improve our trade situation, not by withdrawing behind protectionist barriers, but by facing the realities of import quotas, exchange controls, administrative restrictions and other obstacles to trade and seeking their removal through international agreements for reciprocal reduction of non-tariff barriers. I would like to submit the major portion of Mr. Norris' speech for the RECORD:

A MAJOR PORTION OF THE REMARKS PREPARED FOR DELIVERY BY ROBERT M. NORRIS, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL, BEFORE THE TWELFTH ANNUAL CONFERENCE OF THE CONTAINERIZATION INSTITUTE, MARCH 14, 1972.

Before we can think about realism in world business, it seems to me important to first think about our foreign economic policy. For nearly 40 years, United States foreign economic policy has been founded upon expanding U.S. international trade and investment. Just as recently as February 9, President Nixon, in his report to Congress on U.S. Foreign Policy for the 1970's, stated:

"A retreat by any nation or group of nations into protectionism, or attempts to gain advantage over others by means of neo-mercantilist policies, will deal a severe blow to the international cooperation which underlies the strength and prosperity of all nations." In the same document, the President calls for "a general expansion of world trade including improved access for American products to foreign markets."

Foreign economic policy, to the extent possible, should be formulated for the longer run. Unfortunately, however, these policies become frustrated by five-alarm, short-term measures.

On the positive side, it seems to me that the New Economic Program provided a badly needed shock last August to the system of fixed exchange rates which had been the monetary mechanism for world trade since the Bretton Woods agreement of July 1944. The Smithsonian Accord reached last December 18th in Washington initiated a new transitional phase for the monetary system, averting the immediate threat of economic warfare. Exchange rates have stabilized within wider margins, so that foreign traders can do business with a greater degree of certainty. Nevertheless, there remains a massive "dollar overhang" of U.S. dollars in foreign hands, waiting to be repatriated. Following our almost incredible \$30 billion balance of payments deficit last year on an official settlements basis, the dollar holdings of foreign central banks have shot up to more than \$29 billion, and this, plus other foreign holdings, have brought the total dollar "overhang" to more than \$50 billion.

We must not be impatient about the reflow of dollars which are held abroad. The enactment of the Administration's gold bill, increasing the official dollar price of gold by eight and a half per cent, should do much to help. But until this takes place, there can be some continued uncertainty about monetary developments. The dollar is not yet out of the woods—or should I say Bretton Woods.

In any event, for the short-term at least, American traders now have the advantage

of a general upward realignment of foreign currencies, averaging around seven per cent, thus making American products more competitive. Actually, calculations of the average appreciation of the currencies of our major trading partners (except Canada) indicate a greater advantage of 10 to 12 per cent for the dollar.

We in the Council welcome the realistic realignment of exchange rates as an interim step toward a truly workable international monetary system. We believe that a foremost imperative for world economic progress is to resolve disparities which had developed in the functioning of the Bretton Woods system.

Another fact of life in the real world of international business is the significant number and variety of non-tariff barriers still obstructing commerce in the aftermath of the tariff cuts negotiated at Geneva under the Kennedy Round and completed at the start of this year. Some say it is time for a Nixon Round of negotiations aimed at removal of non-tariff barriers. Others say there will be no trade bill in Congress this year, which would authorize the United States to enter new trade talks, because of the fear that it would be saddled with protectionist amendments.

Pending new negotiations, world traders must face the reality of import quotas, exchange controls, administrative restrictions and other obstacles to trade. More than a thousand of these arbitrary barriers are said to be listed in a document compiled by the Secretariat of the General Agreement on Tariffs and Trade.

We must continue to support stronger initiatives to achieve trade expansion through international agreements for the reciprocal reduction or removal of non-tariff barriers. These negotiations must call for sound bargaining based on the principle of enlightened national interest, promising real advantage for expanding markets for U.S. products, with the interest and well-being of agriculture as well as industry fully comprehended.

Negotiations with the European Economic Community thus assume particular importance. The coming expansion of the Common Market raises serious questions for United States traders. Will the enlarged Market maintain its wall against American farm exports? Will it keep up its preferential arrangements with African countries? We should call for a phasing out of discriminatory trading arrangements and would hope instead for progress in trade liberalization on the most-favored nation basis. The conditions for world trade must be based on equity and reciprocity.

We can no longer rest assured that we enjoy a monopoly on all advanced technology or on production techniques or even managerial skills and know-how. Our trading partners abroad challenge us for markets in Latin America, Africa, Asia and even in our own backyard.

Indeed, our shares of markets have been declining in the face of this competition. World exports last year are estimated to have amounted to \$343 billion, of which the United States exported \$43 billion, or 12.6 per cent of the total. Ten years ago the world total was \$134 billion, of which the United States had a 16.7 per cent share.

Last year the United States had its first trade deficit since fiscal year 1893, amounting to more than \$2 billion. Even taking into consideration the boost for American competitiveness provided by the New Economic Program, it must be recognized that some time will elapse before any substantial improvement in our trade balance will be realized. Realistically, a trade deficit estimated at about \$1 billion for 1972 would probably be

in the ballpark. Another significant balance of payments deficit is clearly in the offing. However, we should look for an improvement in our balance of payments as well as the beginning of a buildup in our trade surplus in 1973.

We are still the world's leading exporter and importer, and I know that—competition or no competition—we intend to keep it that way. You gentlemen, who are on the firing line of world trade, know better than any that America can compete.

But today there is a clear negative reality; namely, the threat to the future growth of our foreign markets in the form of legislation which would have a disastrous effect on America's international companies and the U.S. economy. I refer to the Burke-Hartke bill, entitled "Foreign Trade and Investment Act of 1972," which in its restrictive and protectionist trade aspects, could be more damaging to America's real economic interests than was the Hawley-Smoot Tariff Act of 1930. This legislation would create a new agency to impose quotas on imports of certain goods, would establish controls on the transfers of both capital and technology, and would increase taxation on foreign source income primarily by doing away with the long-established credit allowed for foreign taxes paid and making immediately taxable all foreign earnings even though not remitted as dividends.

Much has been said and written about this proposed legislation. Much will continue to be said and written. In November of last year we in the Council published a document on this subject as a result of a survey of our membership entitled, "The Impact of U.S. Foreign Direct Investment on U.S. Employment and Trade." If I were to make just one point today, the enactment of the Burke-Hartke bill would achieve effects just the opposite of those intended by the proponents of the bill. Instead of saving jobs for American workers, it would cost jobs of American workers. Instead of helping exports, it would curtail exports.

One can readily understand the emotional basis for legislation of this type. When Americans are out of work, the instinct is to pass a law, or do something drastic so they can go back to work. But this bill is self-defeating. It assumes that management is more interested in creating foreign jobs than in creating jobs at home. That is just not so.

The basic problem of maintaining full employment and an equitable bearing of the burden of adjustment to changes in industrial production and trade patterns must not rely on restrictive measures as proposed in the Burke-Hartke bill, but should rely on expansionist approaches which would increase the contributions of international companies to our balance of payments and which would increase the level of employment in the United States and internationally. It is one of today's realities that United States growth is tied directly to world economic growth and cannot be increased at the cost of growth elsewhere.

It is my hope that labor organizations who seem to be campaigning so actively for the Burke-Hartke bill will begin to appreciate the true economics of what they propose before it is too late. Nobody wants a return to the Hawley-Smoot era or to the Depression and the shrinkage of world trade which came with it.

To try to reach full employment through restrictive measures aimed at cutting off imports, slowing the flow of technology and prohibiting foreign direct investment is to multiply several fold the effects of the "beggar-thy-neighbor" policies of the 1930's. Rather, we should be pursuing policies which seek to solve the problems of industrial

growth and change through expansion and not contraction or economic isolationism.

At the New York Economic Club dinner the other night, Secretary of Commerce Peter G. Peterson was asked how he assessed the political outlook for the Burke-Hartke legislation and whether the Administration planned to take an active role in working for its defeat. In referring to the economic climate which prevailed just before the New Economic Policy was announced last August, Secretary Peterson said:

"In that environment, with high unemployment, I think I can say almost emphatically that the odds of your getting something like the Burke-Hartke bill, which I would consider a national disaster, were much higher than they are at the present time."

He went on to say "the Administration is doing everything it can to make its position clear—that the effects that are being discussed today are very understandable, they're very human and we must do something about the unemployment problem in this country—we've got to do more about the whole adjustment process—which is getting more serious, but to do it in a way that would close off America would not only have the most serious kinds of effect on our competitiveness on our productivity, indeed on our jobs, but in my view on the kind of world that it would become if this country were to close itself off, because we are entering a world where you cannot separate economics from politics."

Earlier I referred to the progress which you have all made in the effective use of containers. I would be remiss if I did not also commend progress that has been made in a corollary area, namely, that of documentation. The National Committee on International Trade Documentation has shown that our annual foreign trade amounts to 18 million shipments, export and import, and these shipments create more than 800 million documents which generate a total of more than six billion copies. The cost of documents is said to be about 7 per cent of the cost of the product. Much has been accomplished in the direction of the simplification of all this paperwork, notably the development of the United States Standard Master for International Trade, a format which will incorporate commercial forms with the Government Bill of Lading, Drawback Form, Export License and Customs Entry Forms.

Even greater progress in this partnership between government and business is again one of the realities of doing international business.

The Office of Facilitation of the Department of Transportation has provided leadership on the governmental side in the alignment of commercial and governmental documents; in achieving agreement with other shipping nations for an intermodal through Bill of Lading applicable to all surface cargo movements; in studies for a standard transportation commodity description and code system, a uniform system of marking and identification of containers, and other steps toward the development of coordinated transportation services in the intermodal environment which characterizes today's transportation industry.

All concerned agencies of Government are strongly bending their efforts toward helping American traders to expand sales abroad. For example, there is the Administration's legislation for the DISC. The Domestic International Sales Corporation is a means for achieving limited deferral of taxes on export sales income to thus make us more competitive internationally. Without going into the details of this new mechanism, I commend it to the attention of any exporter or potential exporter who has not already looked into

its possibilities. Besides the statutory departments of our government such as State, Treasury, Commerce and Agriculture, we have as partners with business of course the Export-Import Bank of the United States and such other agencies as the Foreign Credit Insurance Association and the Overseas Private Investment Corporation.

The National Export Expansion Council is another example of effective government-business partnership. This organization originated with a directive by President Eisenhower on March 17, 1960 which resulted in the creation of a National Export Expansion Committee of five members. Today, as the National Export Expansion Council, it is composed of some 80 business, labor and professional leaders. It is concerned with advising the Secretary of Commerce on overall coordination of the national export expansion program. The 19-member Executive Board provides planning and policy direction and develops recommendations on international business programs, working through five action committees, export finance, taxation, transportation, export promotion and trade and investment in developing countries.

In turn, the 42 Regional Export Expansion Councils, which coincide with the Department of Commerce field offices, are comprised of dedicated private businessmen and professionals who develop and implement practical programs to stimulate greater interest in exporting. They serve in an advisory capacity on a great variety of export trade matters to assist those who are already in and those who want to enter the export field. I urge everyone here to fully utilize and take advantage of the services and programs of the Regional Export Expansion Councils and the Field Offices of the Department of Commerce.

Last year the United States exported \$65 billion worth of goods and services. This was equal to about six and a half percent of our gross national production of goods and services. We can raise this percentage. I am confident and find great comfort in the knowledge that, supported through your work and efforts, American leadership in world trade can and will continue.

Mr. ASPIN. Mr. Speaker, on March 16, the distinguished gentleman from Minnesota (Mr. FRASER) and I introduced the Workers Readjustment Assistance Amendments of 1972. This legislation will improve and liberalize rules of eligibility and benefits for workers who seek adjustment assistance. The present system, Mr. Speaker, to be quite blunt, is a disaster. The Tariff Commission which determines eligibility of workers and of firms has been totally unresponsive to the needs of both groups.

Between 1962 and 1969 not one single application for workers adjustment assistance was approved by the Tariff Commission. Since then the number of approved applications has been extremely limited.

The purpose of our legislation is to remove the Tariff Commission from the process of determining workers eligibility for adjustment assistance. Our bill provides for the establishment of 12 regional councils known as industry councils that will be made up of three representatives of labor, three representatives of management, and three public members all appointed by the Secretary of Labor. The regions outlined in the legislation will parallel the present Federal Reserve districts.

The purpose of this decentralization of the process is to wrestle control from Washington's central bureaucracy which is unfamiliar and unsympathetic to the problems of both workers and firms around the country. Members serving on an industry council will know the problems of their particular region. While industry councils based on a single industrial sector could easily become self serving, a regional council offers the necessary balance between excessive central control and dominance by the narrow interests of a single industry.

Not only have we attempted to establish a middle ground in setting up an industry council, but we also have tried in this legislation to stake out a middle position between extreme free traders and extreme protectionists. A few free traders are willing to offer concessions to foreign competition without providing assistance to displaced workers. Many protectionists are willing to throw away all of the important benefits that free trade provides rather than lose a few jobs. Our bill will permit the continued expansion of free trade, which eventually produces more jobs than it destroys, and at the same time provide adequate compensation for affected workers.

It is my hope that if the Congress during this session debates the issue of trade, it will take into serious consideration striking this proposed balance between extreme free trade and protectionism. Free trade is the best route to economic prosperity but it cannot be achieved without providing displaced workers with a

chance to start a new life, and find a new job.

SCHOOL BUSING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. STOKES) is recognized for 60 minutes.

Mr. STOKES. Mr. Speaker, I have requested time this afternoon to bring together my colleagues from the Congressional Black Caucus and many of our colleagues in the House to discuss President Nixon's proposals concerning school busing. We will be discussing the President's statement of March 17, 1972, and two bills which have been introduced to implement his recommendations.

The first of the bills, H.R. 13915, was introduced by the gentleman from Ohio (Mr. McCULLOCH), the gentleman from Michigan (Mr. GERALD FORD), and the gentleman from Minnesota (Mr. QUINN). It is entitled the "Equal Educational Opportunities Act" and has been referred to the Committee on Education and Labor.

The second bill, H.R. 13916, was introduced by the gentleman from Ohio (Mr. McCULLOCH) and the gentleman from Michigan (Mr. FORD). It is entitled the "Student Transportation Moratorium Act."

Before discussing the specifics of the two bills, I must comment briefly on the President's statement and the policy it reflects. There seem to be several basic themes. The first theme is that the struggle to dismantle the dual system of schools is over. By proclaiming victory, President Nixon justifies his proposal to limit the remedies which have been most successful in bringing about desegregation. Several times he states that:

The dismantling of the old dual system has been substantially completed.

That statement is tragically and grossly incorrect. The administration's own data indicate the minimal progress which has been made since Brown against Board of Education was decided. On June 13, 1971, the Department of Health, Education, and Welfare released data on desegregation of schools. In the continental United States the following figures indicate the degree of de facto segregation which remains:

NEGROES BY STATE—NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION, FALL 1968 AND FALL 1970, ELEMENTARY AND SECONDARY SCHOOL SURVEY

Negroes attending																	
State	Total pupils	Negro		0 to 49.9 percent minority schools		50 to 100 percent minority schools		80 to 100 percent minority schools		90 to 100 percent minority schools		95 to 100 percent minority schools		99 to 100 percent minority schools		100 percent minority schools	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States:																	
1968.....	43,353,568	6,282,173	14.5	1,467,291	23.4	4,814,881	76.6	4,274,461	68.0	4,041,593	64.3	3,832,843	61.0	3,331,404	53.0	2,493,398	39.7
1970.....	44,877,547	6,707,411	14.9	2,223,506	33.1	4,483,905	66.9	3,311,372	49.4	2,907,084	43.3	2,563,327	38.2	1,876,767	28.0	941,111	14.0

Thus, 49.4 percent of black students are still in schools which are over 80 percent

black, and 14 percent of black students are still in 100 percent segregated schools.

The figures on blacks in the 100 largest school districts are even less encouraging.

NEGROES IN 100 LARGEST (1970) SCHOOL DISTRICTS BY GEOGRAPHIC AREA—NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION, FALL 1968 AND FALL 1970, ELEMENTARY AND SECONDARY SCHOOL SURVEY

Area		Negroes attending															
		Negro		0 to 49.9 percent minority schools		50 to 100 percent minority schools		80 to 100 percent minority schools		90 to 100 percent minority schools		95 to 100 percent minority schools		99 to 100 percent minority schools		100 percent minority schools	
				Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent	Number	Per-cent
Continental United States:																	
1968	10,328,038	3,195,127	30.9	415,162	13.0	2,779,965	87.0	2,468,005	77.2	2,298,320	71.9	2,148,363	67.2	1,745,219	54.6	1,041,396	32.6
1970	10,482,814	3,387,423	32.3	544,109	16.1	2,843,314	83.9	2,431,526	71.8	2,224,162	65.7	2,000,227	59.0	1,513,616	44.7	710,181	21.0
32 Northern and Western: ¹																	
1968	5,747,849	1,796,111	31.2	248,067	13.8	1,548,044	86.2	1,303,789	72.6	1,171,311	65.2	1,047,760	58.3	752,904	41.9	296,376	16.5
1970	5,787,264	1,909,984	33.0	250,812	13.1	1,654,172	86.9	1,359,940	73.3	1,269,931	66.5	1,129,751	59.1	801,715	42.0	316,148	16.6
6 Border and District of Columbia: ²																	
1968	1,340,469	470,901	35.1	62,122	13.2	408,779	86.8	375,791	79.8	357,807	76.0	343,097	72.9	278,341	59.1	145,386	30.9
1970	1,360,862	487,435	35.8	66,122	13.6	421,313	86.4	383,259	78.6	364,189	74.7	342,118	70.2	286,306	58.7	150,463	30.9
11 Southern: ³																	
1968	3,239,720	928,115	28.6	104,973	11.3	823,142	88.7	788,425	84.9	769,202	82.9	757,506	81.6	713,974	76.9	599,634	64.6
1970	3,334,688	990,004	29.7	227,175	22.9	762,829	77.1	648,327	65.5	590,042	59.6	528,358	53.4	425,595	43.0	243,570	24.6

¹ Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin and Wyoming.

² Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia.
³ Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

These statistics demonstrate two points. Clearly, desegregation is far from completed. Perhaps even more important, desegregation has progressed much more slowly in the North and West than in the South. The lack of progress in the North reflects the greater degree of segregation in housing in urban areas. The chance of a neighborhood school being segregated are greater in the North than in the South because of housing patterns. Busing, which has sometimes been used to bring together students from different neighborhoods, has been a valuable tool in desegregating these schools. It cannot be lightly discarded.

Another of the President's themes is that busing, in and of itself, is somehow objectionable. His view appears to be that the inconvenience, the disruption, and the expense of busing outweigh the benefits of desegregation. He admits that the courts turned to busing because it offered a realistic and immediate approach. A busing plan benefits students now in school, not students yet unborn, as plans to construct new facilities would. Because he is satisfied that the struggle for desegregation is over, the President sees no harm in eliminating the effective and immediate tool of busing.

President Nixon cites Chief Justice Burger's statement in the Swann case to the effect that schools cannot be made to solve all of the problems of racial discrimination. Ironically, he never mentions the discussion, in the same opinion, of busing. The reason for this omission is obvious. The Chief Justice, speaking for the unanimous court, upheld the district court's conclusion that assignment of students to their neighborhood schools would not have produced a dismantling of the dual school system in Charlotte. In short, busing was not merely justifiable but necessary in that instance. *Swann v. Board of Education* (402 U.S. 1, 29-32 (1971)).

The President's proposal directly conflicts with the reservations of Chief Justice Burger about "rigid guidelines" for application to an infinite variety of problems. Swann at 29. The President would have national uniformity. Courts would be deprived of flexibility to deal on a case-by-case basis with local prob-

lems. Busing, which the court upheld in Swann, and which has been successfully used in many cases would be uniformly prohibited.

Finally, President Nixon speaks of equalizing educational opportunities without busing. His plan smacks of Plessy v. Ferguson. He would leave the students, black and white, affluent or destitute, where they are. He speaks of providing additional funds to the poorer schools to bring them up to parity with the better schools. Actually, his proposal provides no new or additional funds to improve poor schools. It simply shifts funds already budgeted, eliminates the cost of busing, and continues programs which were to be funded for just 1 year. In short, the President has once again spelled out a "benign neglect" policy both with respect to desegregation and to improvement of the quality of education.

Let me now comment specifically on the substance of the President's proposals, the bills themselves. The moratorium bill, H.R. 13916, provides for a halt to busing for purposes of desegregation. Busing, under a court order or a desegregation plan submitted under title VI of the Civil Rights Act of 1964, would be stopped until July 1, 1973 or the date of enactment of permanent legislation, whichever is earlier. The bill contains "findings" by the Congress to the effect that busing has been extensive and excessive and that there is a need for national uniformity of standards on reassignment and busing for purposes of desegregation. Nearly 45 percent of all students are bused, and less than 3 percent of that total are bused for purposes of desegregation. Busing can hardly be considered either extensive or excessive. I share the view expressed by Chief Justice Burger that national uniformity on the subject of busing is not only unnecessary but impossible if we are sincere about desegregation. Swann at 29 to 32.

My basic opposition to the moratorium bill is that it will leave thousands of black children where they are, in poor, segregated schools, while the Congress considers ways to improve their lot. Busing, which can provide some relief to some of those children, would be pro-

scribed. This lost time will never be regained. I submit that this moratorium is essentially similar to a stay of proceedings which is available in court proceedings. Why should Congress grant a stay in all cases, including those which are not even on appeal, when that relief is available through the appellate court process.

It makes for more sense to allow the courts to continue to weigh the arm to black children against the expense and inconvenience of carrying out a busing order in individual cases. I note that the courts frequently issue such stays and expedite the appeal process. This was done very recently by Judge Haynsworth in the Richmond case decided by Judge Mehri.

Whatever happens on the issue of a moratorium on busing, we must confront several very serious policy questions in the equal educational opportunities bill, H.R. 13915. That bill is proposed as the ultimate, long run program to desegregate schools. In reality, it would perpetuate and even promote segregation. The grandiose and eloquent statements of policy are empty because of severe limitations on existing remedies.

The congressional finding in section 3(a)(2) that "the abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems" is more than a self-serving declaration by the Nixon administration. It will become a convenient excuse for courts and the administration to stop desegregation efforts where they are. It tells courts and administrations that we have gone far enough.

In sanctifying the neighborhood school concept, the bill promotes the theory of separate but equal schools. Given the realities of present housing patterns, neighborhood schools will be segregated. The bill provides no remedies to deal with this situation and eliminates two remedies which have been fashioned by the courts. Busing is proscribed absolutely with respect to students in the sixth grade and below, and is virtually impossible to justify for students in the 7th grade and above. Decisions like that by Judge Mehri in the Richmond case

would be all but eliminated. That case involved the merging of school districts despite politically determined boundary lines. Section 404 of this bill would require, as the basis of such an order, a showing that the "lines were drawn for the purpose—of segregation—and had the effect of segregating children among public schools." This imposes a nearly unbearable burden on a plaintiff seeking relief. He must go back to the time of the creation of the districts and show that lines were drawn to establish segregated schools. In many cases, this simply is not true and in nearly all cases it could not be proven. This section thus eliminates decisions like that in the Richmond case.

Finally, I must express my complete amazement at the provisions contained in section 406. The section provides that:

On the application of an educational agency, court orders or desegregation plans under title VI of the Civil Rights Act of 1964 . . . shall be reopened and modified to comply with the provisions of [the] act.

The effect of this section would be to permit all of the existing court orders and desegregation plans to be challenged on the basis of the limitations of remedies contained in this bill. Busing plans would, of course, be the most seriously affected. Desegregation programs which are now operating effectively and with a minimum of controversy would be subject to attacks which would reopen old wounds and undo all gains. The doctrine of stare decisis would be meaningless. Cases which have been through years of appeals would be relitigated with all of the delays and expenses that would involve. This provision amounts to a retroactive rollback of many of the gains for which we have struggled so long.

I have serious doubts about the constitutionality of the President's proposals to limit desegregation remedies. Congress clearly has the power to enforce 14th amendment guarantees.

The power of Congress to restrict or dilute the guarantees of the 14th amendment was specifically considered by the Supreme Court in *Kutzenbach v. Morgan*, 384 U.S. 641 (1965). Speaking for the majority, Mr. Justice Brennan said that section 5 of the 14th amendment "does not grant Congress power to—restrict, abrogate, or dilute—the guarantees of equal protection and due process. *Morgan* at note 10, page 651. I submit that this is exactly what the administration bills are designed to do.

The personal rights of litigants to equitable relief, where appropriate, would be cut off by this legislation. The determination of the proper scope of equitable relief should be left to the courts. The President should ponder the statement on the subject by Chief Justice Berger in the *Swann* case:

In seeking to define the scope of remedial power or the limits on remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness inherent in equity. Substance, not semantics, must govern, and we have sought to suggest the nature of limitations without frustrating the appropriate scope of equity. *Swann* at 31.

The administration proposal would "frustrate the appropriate scope of equity" and would deny litigants their

personal rights to adequate, effective relief. Substantive rights without appropriate remedies become meaningless.

In view of the provisions I have discussed, it is hardly surprising that the council of black appointees of the Nixon administration is reportedly dissatisfied with the President's proposals and is studying changes. What is distressing about that report is that the black appointees apparently had virtually no input into the drafting of the bills. The administration plan is far more than an antibusing plan, it is a plan to limit future desegregation efforts and to roll back many of the gains.

We have come to expect the worst from an administration which began its civil rights enforcement efforts by intervening to delay desegregation of Mississippi schools.

Able, dedicated civil rights leaders like Frank Render, Leon Panetta and Clifford Alexander worked within the administration but were forced out because of their effectiveness and unwillingness to back down. These bills are the culmination of a progression of actions which have chipped away at our gains and made further progress more difficult. We begin today to struggle against the constraints of this regressive legislation.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may extend their remarks on the subject matter of my special order today.

The SPEAKER pro tempore (Mr. LINK). Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. RANGEL. Mr. Speaker, I believe that most Americans are against any form of racial discrimination and that they accept the fundamental provision prohibiting it. It follows, therefore, that any child, black or white, has the right to be free from discrimination in our public schools.

President Nixon, however, believes otherwise.

In his speech to the Nation and in the legislation he has just sent to Congress, the President has clearly cast his ballot in favor of racial discrimination, injustice, and unequal opportunity. He has submitted a bill with the misnomer, Equal Educational Opportunities Act, a proposal which, if enacted, would guarantee unequal, antieducational, non-opportunities for millions of black American children.

A close examination of the Presidential proposal makes it obvious that he has surrendered to the forces of regression and racism. His bill opens with a series of fallacious findings which would lay down a smokescreen of deceit in front of our citizens. Were Congress to adopt the President's contention that "the abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems," then Congress would shut its eyes to the truth: the Department of Health, Education, and Welfare has reported that only a minority of black children—in the North and in the South—attend integrated schools.

The truth is that school busing con-

stitutes the largest transportation system in the country and that only a small percentage of those who ride the buses each day do so for reasons of racial or educational equality; they simply live beyond walking distance of any neighborhood school. Furthermore, since students will travel by schoolbus for many years to come, the President and Congress must take decisive action to establish rigid schoolbus safety standards—regardless of the present controversy.

We did not hear the voice of President Nixon raised when it was black children who were bused away from their own neighborhoods to segregated schools. But the administration would now outlaw the use of busing to achieve a positive result.

The Nixon legislation shows a total lack of understanding of the system of justice which we have developed over the past 200 years. He criticizes the Supreme Court for failing "to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system," ignoring the fact that our courts are bound to consider the individual circumstances in each case. We all recognize that each town and city is different, and that is senseless to argue that the courts should disregard variations found in specific cases. However, the cardinal concept is, however, well established: racially discriminatory and unequal schools are intolerable under our Constitution.

We are told that the President is opposed to discrimination, yet his legislation would curb the equity powers of our courts to remedy the effects of that discrimination. Adoption of the President's bill would render the right to equal and quality education a meaningless sham.

We are told that the President believes in "law and order," yet he proposes that any school desegregation case already decided under title IV of the Civil Rights Act of 1964 be reopened at will. Does "law and order" mean overturning the antidiscrimination laws and court decisions of the past? Yes, according to the President.

Congress cannot morally adopt the Nixon plan. It cannot in good conscience succumb to the lure of the bigot. It cannot now reverse the slow, hard-won progress made by those who believe in civil rights and equal opportunity for all Americans.

The question of busing has become a presidential red herring designed to perpetuate racial discrimination and deny educational opportunity to black children.

Mr. CONYERS. Mr. Speaker, I sometimes wonder how far a President will go to mislead his countrymen, and how far they will let him go before realizing that they have been swindled. Surely Mr. Nixon has gone too far this time trying to coax the public to participate in his antibusing sideshow. A proposal which appears to contain something for everybody is in reality the worst kind of political sham.

Mr. Nixon is playing a game which threatens to tear at the already delicate legal and social balance in this country.

He has chosen to cater to the fear of the powerless and to manipulate the power of the fearful. Quality education, no matter how important and basic to a nation's growth, will not solve the problems of school desegregation. And school desegregation, no matter how vital to a healthy, integrated society, will not by itself bring us quality education.

There is no question that a horrendous deficiency exists in today's education. Thousands of schools, black and white, are inadequately funded, poorly staffed, and isolated from the mainstream of American life. Money is desperately needed to rectify the deficiencies of these schools and it must come in great quantities and soon. But, Mr. Nixon's legislation, promising as it may appear to some on the surface, does not solve the economic needs of education. While minimal emphasis is placed on aid to ghetto schools, the bill basically rearranges funds which have already been requested by the President.

Quality education is more than airy classrooms, well-paid teachers, and lots of books. There can be no quality education without integration. Quality education means an educational experience which will lay the foundation for intelligent participation in a democratic society. Children who are raised in isolation can hardly be expected to understand their society and its workings. And, since children learn more from each other than from any other resource of the education environment, there can be no better way to achieve this understanding than through schools which are representative of their society. Integrated education that has the support of the community is working in hundreds of American communities in every region. It can and does result in better education for all children—black and white, rich and poor.

The ruse of "quality education" is not the worst of the Nixon hoax. The President has used as his final justification for the busing moratorium recent polls which say black parents do not like busing either. But what he has not dealt with is the sentiment supported by a recent Gallup poll that 80 percent of the black people interviewed believe that if busing will get them what they want—which is good education for their children—then busing it will have to be.

By rejecting busing out of hand, Mr. Nixon is creating an impression that the courts have ordered excessive busing. This is simply not true. Court-ordered busing has generally not been excessive, nor have courts engaged in indiscriminate racial balancing.

There is a popular belief that busing to desegregate schools has resulted in more overall busing. This has not been the case. Children have been bused so long as there have been buses. A careful look at the Department of Health, Education, and Welfare statistics on busing since 1929 shows that while the number of children bused to school has risen gradually, along with an increase in the total number of children, the rate of increase has not. That is to say, in 1929, 7.4 percent of all schoolchildren were bused. That figure rose about 10 percentage points every 10 years up to

1959. It did not increase after 1954. What is more, the rate of increase has actually dropped since 1959. Yet in the 18 years since Brown against the Board of Education busing has not been massive, where is the basis for current fears? How many times have children been bused to maintain segregated patterns of education? Where are the cries against busing poor little children far from home then? How many times have children been bused past white schools to black schools farther from home?

Despite his public promise to find means to replace busing as a tool of integration, Mr. Nixon has simply not delivered. His revelation that he found an alternative to busing turned out to be just another Presidential pretense. Instead of replacing that so-called bad means to a good end, he has left open the possibility of a bill of questionable constitutionality, sought the enactment of legislation which would inhibit the Federal courts or administrative agencies from rectifying acts which have already been declared illegal by the Supreme Court, and generally muddled an already confused and desperate problem.

Although by the President's own claim, the proposed moratorium on busing would only forbid implementation of new busing ordered by the courts, closer examination of the bill throws this already doubtful proposal into further question. Section 406 of the so-called Equal Educational Opportunities Act states:

On application of an educational agency, court orders or desegregation plans under Title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin shall be reopened and modified to comply with the provisions of this Act.

With administrative support and diligent application, this small, unobtrusive section could become the tool for destroying the foundation of desegregated education as we have come to understand it—modest as it has been—in the past 18 years.

So, where are we left now? We could be saddled with legislation which is claimed to do much but which in effect would do very little. It would neither meet the desperate economic needs of education, nor would it resolve the dilemma of integrated education. Those who have remained loyally committed to fighting separate and unequal societies have now been told that the 1954 Brown decision and the Civil Rights Act of 1964 are no longer basic underpinnings of national domestic policy. Even those who oppose busing but favor integrated education have been cheated. And in the process of confusing the issue, the President may very well have succeeded in doing great damage to our constitutional and judicial structure.

Mr. MITCHELL. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to the distinguished gentleman from Maryland.

Mr. MITCHELL. First I want to commend my distinguished colleague, Congressman STOKES, for taking this special order, and I wish to further commend him for the very succinct and precise presentation he has made with reference

to the latest maneuver by the Nixon administration. This maneuver, as Congressman STOKES has indicated, is clearly a continuing part of the effort of the administration to wipe out the gains that black Americans have made.

I believe we have to speak bluntly and honestly to this. I believe the school-busing issue is the "white herring" of this political campaign year. It is a much better "white herring" than "law and order" was 4 years ago, because it involves children, motherhood, neighborhood, and the American Constitution. Forty to 65 percent of all school children—depending upon whether you read the school bus or the public transportation statistics—are riding something to school already.

Busing is a very good "white herring" indeed.

Antibusers say they cannot be accused of racism, because they can point to significant numbers of blacks who are themselves against busing. They conveniently ignore the fact that blacks have reasons—centuries of reasons and decades of school desegregation legislation—leading them to conclude that it is time to stop holding out hopes, false hopes, to yet another generation of kids, and start educating their own children, controlling their own schools, and improving their own neighborhoods. But do not believe for a minute that this widespread disillusionment is limited to busing, or even education in general, a fact which I have never heard brought out by the big-time antibusers when they gleefully point to black support.

For most of the antibusing forces in this country, however, the issue is so emotional that it is not affected by blacks for or against. People who might have had trouble supporting unembellished racism, can wholeheartedly support a euphemism for racism. Especially when it involves kids and the American Constitution. And when it occurs in the total absence of moral leadership by the American chief of state.

I thank the gentleman for yielding.

Mr. STOKES. I thank the gentleman from Maryland for his remarks.

I now yield to the gentleman from California (Mr. HAWKINS).

Mr. HAWKINS. First, Mr. Speaker, I would like to commend the gentleman from Ohio for the very fine statement which he has made and for this opportunity which he has given to set the record straight.

I am in agreement with what he has said, and I feel he has made a great contribution to a clarification of the issues in this controversy.

I would like at this particular point, Mr. Speaker, to have inserted in the RECORD a record of the Nixon administration on school desegregation actions and inactions.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

CHRONOLOGY OF THE NIXON ADMINISTRATION'S SCHOOL DESEGREGATION ACTIONS AND IN-ACTIONS

1969

Jan. 29: Five southern school districts, against which Title VI proceedings had been exhausted and termination of federal funds

were pending, were given a 60-day period of delay by HEW Secretary Finch. Finch said if the districts came up with acceptable plans, they would receive the lost funds retroactively.

Feb. 6: The President said of freedom-of-choice plans for desegregation—"If the plan were 'simply a subterfuge to perpetuate segregation, then the funds should be denied to such a school system.' But, if a plan were found 'to be one which actually is bringing an end to segregation' then it would be 'appropriate'."

Feb. 10: HEW Secretary Robert H. Finch said that the Nixon Administration would move to enforce school desegregation legislation "nationally, not just in the South." "You've got de facto segregation in every part of this country," he declared, "and we're going to go after it."

March 10: Secretary Finch's interview in U.S. News & World Report alluded to some impending change in the HEW school desegregation guidelines. In addition, the Secretary was quoted as saying that HEW must retain its enforcement powers: "We cannot turn (the entire enforcement-compliance field) over to the Justice Department now because we have built up a certain momentum in education, in terms of getting school districts to recognize that a . . . national goal has been set. If you were to chop off everything now in my department, just let Justice handle compliance. . . . I think a lot of this momentum that has been built up would be lost." (See July 3, 1970)

March 14: HEW General Counsel designate Robert Mardian sent Secretary Finch a memorandum advocating, among other things, that HEW might permit an extension beyond the previously established 1969 target date for total desegregation and that this policy could be implemented without any particular public announcement. This memorandum was exposed in an Evans and Novak column.

March 18: The Leadership Conference on Civil Rights received assurance from Secretary Finch that there would be no change in the guidelines.

March 24: Secretary Finch disavowed the Mardian memorandum.

April 15: The *Washington Post* reported that Administration sources claimed that the guidelines were being "revamped" because they were "vague and ambiguous." Secretary Finch and Attorney General Mitchell reportedly attended meetings at the White House on the guidelines.

April 15: The HEW Office for Civil Rights initiated enforcement actions under Title VI of the Civil Rights Act of 1964 against Ferndale, Michigan. This was the first HEW action against a northern district.

April 22: Office for Civil Rights Director, Leon Panetta's letter in response to a letter from Jack Greenberg of the NAACP Legal Defense Fund to Secretary Finch: "The Department is not contemplating any changes in the guidelines at this time."

May 16: Leon Panetta, in a speech in Atlanta, said: "Why can't we continue to use free choice? . . . The answer is that the Supreme Court ruled against it. . . . HEW policies are controlled by that decision."

May 13: HEW submits two year plans to a South Carolina Federal District Court giving 21 districts another year of freedom of choice.

June 20: Jerris Leonard commented that the Administration's position would be that districts are required to desegregate by the target deadline (September 1969) where that was possible." He was also quoted as saying "It's wrong to set arbitrary deadlines." (Washington Post, June 20.)

June 28: Secretary Finch was quoted as saying there would be no relaxation of the guidelines. (New York Times, July 1.)

July 1: Secretary Finch proposed to the White House that a new policy statement on the school desegregation guidelines con-

tain no provisions for more time to comply with the law. (New York Times, July 1.)

July 3: Attorney General John N. Mitchell and HEW Secretary Robert H. Finch announced that no longer would the Administration rely chiefly upon fund cut-offs by the HEW Department to bring districts into compliance. Instead, major emphasis would shift to the use of lawsuits initiated by the Justice Department against noncomplying school systems. Such a shift would, Finch and Mitchell said, minimize the need for termination of funds.

The deadline of September 1969 for complete desegregation was reaffirmed. But the Administration said it would permit exceptions for school districts with "bona fide educational and administrative problems." It continued:

"It is not our purpose here to lay down a single arbitrary date by which the desegregation process should be completed in all districts or to lay down a single arbitrary system by which it should be achieved."

The policy statement was deplored by civil rights leaders and lauded by southerners. It was criticized by the U.S. Commission on Civil Rights as a change to a less effective means of bringing desegregation. School desegregation statistics released by the HEW Department showed that areas under court order achieved substantially less desegregation than those under the jurisdiction of the Department.

July 3: Leon Panetta, Director of the Office for Civil Rights, announced that he planned to send all southern school superintendents a letter explaining the new policy. (Washington Post, July 4.) A few days later Secretary Finch was quoted as saying that no letter of explanation would be sent. He said it was "unnecessary."

July 5: White House Press Secretary said that the Administration was "unequivocally committed to the goal of finally ending racial discrimination in schools."

July 7-8: The Department of Justice filed five school desegregation suits in the South and one in the North. HEW sent termination orders covering three districts to Congress for the one-month waiting period before final cut-off of federal funds. One district submitted an ineffective plan which was accepted by HEW during that month. The other two districts were terminated. These were the last fund terminations for 12 months. In previous years, fund cut-offs had averaged over 150 per year.

August 1: The Department of Justice filed a statewide suit against Georgia to end segregation in the state's public schools.

August 3: The Whitten Amendment to the HEW Appropriations Bill was passed by the House. This Amendment would, in effect, have prohibited HEW from requiring anything other than freedom of choice plans. The Administration took no position on the Amendment. Later, in the Senate, it opposed the amendment.

August 13: In Attorney General Mitchell's speech to the American Bar Association, he said: "The extravagant rhetoric of the last few years have offered promises which cannot be delivered, and have set as immediate goals programs which will take a decade to complete."

August 25: The Administration asked the Federal Courts to delay desegregation in 33 Mississippi districts from September 1969 until September 1970. On August 28 the Fifth Circuit granted the Administration request.

August 26: Civil rights lawyers in the Justice Department met to draft a protest against the Nixon Administration's decision to delay desegregation in southern school districts. The lawyers charged that the Administration had bowed to political pressure from southern Members of Congress to relax the guidelines.

September 16: Vice President Agnew said

he was against busing children "to other neighborhoods simply to achieve an integrated status of a larger geographic entity."

September 22: On "Issues and Answers," Secretary Finch said that HEW would continue to use busing as a method of achieving school desegregation.

September 27: Assistant Attorney General for Civil Rights, Jerris Leonard, said, "if the court were to order instant integration nothing would change. Somebody would have to enforce that order." (Washington Post 9-28-69)

October 14: The Department of Justice filed suit against Waterbury, Connecticut. It was the second northern suit filed by the Nixon Administration.

October 29: The Supreme Court in *Holmes v. Alexander* unanimously rejected the Administration's request for desegregation delay in 33 Mississippi districts. It directed immediate desegregation, stating that maintenance of segregated schools under the guise of "all deliberate speed" was no longer acceptable.

October 30: Attorney General Mitchell said, in response to the Supreme Court decree, that the Justice Department would bring every available resource to bear in enforcing the decree. He said, "All Americans, state and local officials, judges, federal officials, and citizens will be called upon to understand, cooperate, and comply. If we believe in a society based on the rule of laws, we will do so without hesitation."

December 8: In a news conference, President Nixon said concerning the Oct. 29 Supreme Court order for immediate school integration, that he intended "to carry out what the Court has laid down. I believe in carrying out the law even though I may have disagreed as I did in this instance with the decree that the Supreme Court finally came down with."

December 31: Again, the Administration asked the Supreme Court to delay until September 1970 the desegregation of "uncommitted districts" of the South. The Supreme Court rejected the request on January 14.

1970

January 6: Secretary Finch expressed concern about the South's new private schools. He said there was a move, which he supported, within the Administration to end tax exemptions for private schools chartered to avoid desegregation in public schools. He estimated 300-400 private schools had opened in the South since enactment of the 1964 Civil Rights Act.

January 22: The Justice Department stated in its Pasadena, California, school desegregation brief that all black neighborhoods were no excuse for all black schools. The Department said, "Under the facts in this case, use of a strict neighborhood school policy and a policy against cross-town busing take on constitutional significance as a violation of the Fourteenth Amendment."

February 1: Vice President Agnew announced that President Nixon planned to establish a Cabinet-level committee to counsel southern school districts about implementing court-ordered desegregation plans "in the least disruptive way."

February 12: White House Press Secretary Ronald L. Ziegler indicated that President Nixon believed the North and the South should be subject to Federal school desegregation orders. He re-emphasized that Nixon had "consistently opposed and still opposes compulsory busing of school children to achieve racial balance."

February 17: Leon Panetta was forced to resign as Director of the Office for Civil Rights. He charged that the Administration was willing to yield to southern political pressure at the expense of the desegregation enforcement effort. (See Panetta book, "Bring Us Together: The Nixon Team and the Civil Rights Retreat", 1971)

February 17: President Nixon promised Federal assistance to school districts "in complying with the courts' requirements." He made the statement during his announcement of a Cabinet-level committee, chaired by Vice President Agnew, to aid schools under court orders to desegregate immediately.

February 21: HEW General Counsel Robert Mardian was named Director of the Cabinet Committee on School Desegregation.

February 24: The HEW Civil Rights Reviewing Authority found that the Columbia, South Carolina school system had failed to desegregate its schools as required by Title VI of the Civil Rights Act of 1964. Secretary Finch said he believed Columbia officials had acted in good faith and that he would reconsider the Reviewing Authority's decision if it were appealed to him.

March 1: Secretary Finch condemned the desegregation orders involving busing for Charlotte-Mecklenburg, North Carolina, and Los Angeles, California.

March 3: Two HEW staff members resigned over the pace of school desegregation and 125 other HEW employees in the Office for Civil Rights sent a letter to Mr. Nixon expressing "bitter disappointment" over the forced resignation of Leon Panetta, director of the office.

March 4: John Ehrlichman, President Nixon's chief domestic adviser, said that he opposed the integration of Negro and white students in the public schools if it only served the purpose of mixing the races and did not upgrade over-all educational standards. The White House aide said he believed "that when a change in the racial makeup of the schools is undertaken for a purely social end, that's a misuse of the schools."

March 6: More than 1,800 HEW employees signed and sent a petition to Secretary Finch requesting an open meeting on school desegregation policies.

March 6: Thirty-seven top black officials in the Nixon Administration met with the President and urged him to clarify his position on school desegregation and to take more action in the field of civil rights. The meeting marked the first time the President had met with all his black appointees at one session.

March 9: Vice President Agnew said the most effective means of ending *de facto* segregation in the United States was by creating opportunities for better housing and better jobs for Negroes, not by busing school children simply to achieve racially balanced schools.

March 24: President Nixon pledged in an 8,000-word document that his Administration would not abandon or undermine the school desegregation gains since the Supreme Court's 1954 ruling outlawing "separate but equal" educational facilities. The President said it was his "personal belief" that the 1954 decision "was right in both constitutional and human terms."

He continued:

"I have instructed . . . officials of the Government to be guided by these basic principles and policies:

"Deliberate racial segregation of pupils by official action is unlawful. . . . It must be eliminated at once.

"Segregation of teachers must be eliminated. . . . Each school system in this nation . . . must move immediately . . . toward a goal under which 'in each school the ratio of white and Negro faculty members is substantially the same as it is throughout the system.'

"With respect to school facilities, school administrators throughout the nation . . . must move immediately to assure that schools within individual school districts do not discriminate with respect to the quality of education.

"Transportation of pupils beyond normal geographic school zones (to achieve) racial balance will not be required.

"Federal advice and assistance will be made available on request, but Federal officials should not go beyond the requirements of law in attempting to impose their own judgment on the local school district.

"Racial imbalance in a school system may be partly *de jure* in origin, and partly *de facto*. In such a case, it is appropriate to insist on remedy for the *de jure* portion, which is unlawful, without insisting on a remedy for the lawful *de facto* portion.

"*De facto* racial separation, resulting genuinely from housing patterns, exists in the South as well as the North; in neither area should this condition by itself be cause for Federal enforcement actions. *De jure* segregation brought about by deliberate school-board gerrymandering exists in the North as the South; in both areas this must be remedied. The law should be applied equally."

Mr. Nixon revealed that the Government planned to allocate \$1.5 billion over the next two years to help school districts in the North and South alleviate the effects of racial segregation.

He repeated his opposition to student busing simply as a means of achieving racially balanced schools without improving the quality of education, and he said that he was in favor of the neighborhood-school concept.

April 8: Secretary Finch and the new Office for Civil Rights Director, J. Stanley Pottinger, held a press conference in which Pottinger announced that HEW would begin monitoring Southern school districts which had agreed or been told by a court to desegregate. (Washington Post 4-8-70) (HEW has never monitored court-ordered plans.)

April 9: The Department of Justice filed an amicus brief in the Charlotte-Mecklenburg case suggesting that Judge McMillan had committed "an abuse of discretion" by ordering an "extreme" busing plan.

April 11: The Commission on Civil Rights criticized President Nixon's March 24 policy statement on school desegregation as inadequate, overcautious and possibly signaling a major retreat on the issue of school integration.

April 13: The Department of Justice filed a memorandum with the Fifth Circuit Court of Appeals spelling out its strong reservations about the Manatee County, Florida, court order busing provisions.

April 16: Attorney General Mitchell said that everyone has "the right to reject unreasonable requirements of busing and to send their children to neighborhood schools." He said this right is "just as important as the right of all of our citizens to be assigned [to schools] without regard to their race." (Washington Post 4-17-70)

April 27: James E. Allen Jr., U.S. Commissioner of Education, said he intended to continue his work to end school segregation whether it was *de facto* or *de jure*. This statement was at odds with President Nixon's Policy statement March 24 that his Administration could do nothing about *de facto* segregation resulting from neighborhood residential patterns.

April 28: Three Nixon Administration chief civil rights officials and their aides met with South Carolina school administrators and told them that all public schools in the South must implement desegregation plans by the time classes resumed for the fall term. OCR Director, J. Stanley Pottinger said his office soon planned to emphasize enforcement against northern segregation and that "it is time to move as vigorously in the North as other administrations have moved in the South." (Washington Post 4-29-70)

May 5: Secretary Finch said on a television interview program that the Supreme Court should move against school racial segregation caused by housing patterns.

May 21: President Nixon formally asked Congress to appropriate \$1.5 billion over the next two years to be used primarily to help finance desegregation of southern schools

and to spur northern school districts to integrate voluntarily.

May 25: HEW notified more than 1,000 school districts that they must remove language barriers and other discriminatory practices which handicap national-origin minority children.

May 26: The Justice Department intervened in a desegregation suit in Senora, Texas. This was the first Administration action in a case involving primarily Mexican-Americans.

June 5: The announcement was made that Secretary Finch was leaving HEW to move into the White House as a counselor to the President.

June 10: Dr. James E. Allen Jr. was asked to resign as Commissioner of Education and Assistant Secretary of HEW by Secretary Finch. Allen attributed his dismissal partly to his views on desegregation. He accused the Administration of lacking commitment to the total desegregation of schools. Allen said Finch had told him "he had been directed to seek my resignation."

June 10: The Internal Revenue Service (IRS) announced in a new policy directive that private schools practicing racial discrimination in their admissions policies would have their tax-exempt status revoked. IRS said, however, that a published open admissions statement would be accepted as proof that there was no discrimination.

June 13: New HEW Secretary Richardson said the Administration was doing everything it could under present standards to produce more desegregation in the North.

June 25: Secretary Richardson said he would use Title VI of the Civil Rights Act of 1964 federal fund cut off powers if necessary to enforce school desegregation. (No funds had been terminated since August 6, 1969.)

June 26: The Justice Department filed an amicus brief before the Supreme Court in opposition to the plaintiffs in the Charlotte-Mecklenburg desegregation case.

June 27: Assistant Attorney General Jerris Leonard chastized critics of the Nixon Administration's handling of school desegregation. He said, "I think it's about time that our politically motivated critics stop accusing a department of footdragging [when it] has made more progress in school desegregation in 17 months than was made in 15 years. . . . I'm getting pretty annoyed by the cynical, asinine criticism. All it does is tend to lessen the confidence of black parents and others who are fighting for desegregation." (Washington Star 6-28-70)

July 2: Secretary Richardson ordered the cutoff of federal funds to three school districts under Title VI of the Civil Rights Act of 1964. There have been no fund cutoffs since.

July 9: The Justice Department filed suit against 46 southern school districts for failing to produce acceptable desegregation arrangements. Six more suits were filed July 10.

July 16: Assistant Attorney General Leonard confirmed Justice Department plans to send a 100-man Federal task force to establish five regional command posts throughout the South in an effort to reduce the potential for disturbances and receive complaints of discrimination as hundreds of southern districts implemented desegregation arrangements for the first time. This activity was in response to the decisions of the Supreme Court and in spite of Administration footdragging.

July 17: The Justice Department issued a statement in Attorney General Mitchell's name declaring that information indicating 100 lawyers were being sent to the South was "premature" and that no decision had yet been made on the number of lawyers to be used.

July 19: Secretary Finch said on "Issues and Answers," "We are not sending any large augmentation of people into the South."

July 20: President Nixon, during an impromptu news conference, said "Our policy . . . is cooperation rather than coercion . . . there cannot be instant integration. But segregation must be ended. That is the law of the land and it is necessary for us to go forward and to end it (segregation) with a transition period which will be as least difficult as possible."

July 30: President Nixon, on sending U.S. officials to the South, said "As far as the number of Federal officials that should be sent to the South, let me emphasize that that will be based on whether those southern districts or states that have this problem of desegregation ask for help, either Justice Department or HEW experts. We are not going to have force—a force policy in this area . . . Our policy is one of cooperation, rather than coercion."

(Top Administration spokesmen told reporters later that the President had erred and that officials would be sent into these areas at the Justice Department's initiative).

August 14: President Nixon visited New Orleans to state his Administration's intention to avoid treating the South as a "second-class part of the nation" in the matter of school desegregation. He said he would meet the responsibility to uphold the Supreme Court desegregation decision. "This is one country, one people, and we are going to carry out the law in that way, not in a punitive way—treating the South as basically a second-class part of the nation—but treating this part of the country with the respect that it deserves, asking its leaders to cooperate with us and we with them."

Mr. Nixon said he had rejected a Federal approach of waiting for trouble and then ordering in Federal enforcers. "I have no patience with those from the North that point the finger at the South and then overlook the fact that in many northern cities and northern states the problem may also be a very, very difficult one."

August 15: Columnists Evans and Novak pointed out that Vice President Agnew had been removed from active participation on the Cabinet Committee on School Desegregation, reportedly to preserve Agnew's standing in the South.

September 6: The New Orleans Times-Picayune reported on an earlier meeting with a group of southerners in which President Nixon stated he had a higher responsibility to enforce the law—and beyond that, to lead the nation out of the energy-tapping racial morass. He said it was time to settle these things, to clean the slate so that the next generation could start fresh.

October 12: The U.S. Commission on Civil Rights reported that there had been a "major breakdown" in the enforcement of the nation's legal mandates forbidding racial discrimination and urged President Nixon to exercise "courageous moral leadership." The 1,115-page report was entitled "The Federal Civil Rights Enforcement Effort."

October 12-14: Solicitor General Erwin N. Griswold, arguing the Government's case before the Supreme Court against student busing and racial balance in the schools in the Deep South, said that white students might flee the South's public schoolrooms if school desegregation were passed too vigorously.

On racial balance in the schools, he said, "I cannot find that in the Constitution." But he rejected the argument that the Constitution prohibited assigning children to schools on the basis of race in order to break up segregated schools.

October 19: The NAACP Legal Defense Fund filed suit against HEW, charging it with "general and calculated default" in its enforcement of Federal school desegregation guidelines.

November 24: Six private civil rights groups charged that the \$75 million Emergency School Assistance Program was improperly administered. They found and documented, among other things, that grants

went to districts engaging in racial discrimination and projects which were racist in their conception.

November 25: The Office of Education said it planned to send inspectors between then and January 15 to all 812 school districts given grants under the Emergency School Assistance Program, and "where we find violations we are going to crack down." (Washington Post 11-26-72)

December 11: The Office of Education earmarked \$3.2 million to help retrain about 1,500 black teachers and principals who had been dismissed or demoted as a result of school desegregation. The Administration made no similar announcement, however, to move legally against districts which discriminatorily dismissed and demoted school personnel.

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March 15: The General Accounting Office issued a report on the \$75 million Emergency School Assistance Program citing "weaknesses" in the administration of the program. It said the "weaknesses . . . were due, to a large degree, to [a] desire for expeditious funding, at the expense of a more thorough review and evaluation of school districts' applications." The findings confirmed those of the private civil rights groups in their report.

March 16: Senator Robert Dole, Republican National Chairman, said the Nixon Administration must find a credible salesman to improve its image among black voters. He said, "We haven't convinced black Americans that there has been a commitment from this Administration for their cause."

April 20: The Supreme Court ruled in the *Swann v. Charlotte-Mecklenburg* case, among other things, that busing was an acceptable desegregation tool. In so doing, the Court rejected the position advocated by the Nixon Administration.

April 21: Ronald L. Zeigler, White House Press Secretary announced, "The Supreme Court has acted and the decision is now the law of the land and it is up to the people to obey it. It is up to local school districts and courts to carry out the court decision. The Departments of Justice and HEW will carry out their statutory responsibilities."

April 22: Secretary Richardson said in a speech to an NAACP Legal Defense Fund dinner in New York City, "We are committed to the full enforcement of the requirements of the law. But we are convinced that these requirements can now be fulfilled more effectively by cooperation than by coercion, by persuasion than by force."

May 14: HEW submitted a desegregation plan for Austin, Texas to a federal district court which called for several non-contiguous school zones and required extensive busing necessitating the purchase of up to 100 new buses.

May 28: In an interview, reported in the Atlanta Constitution, Secretary Richardson said southern cities would be told "you now have new tools" to finish the desegregation job and the government will help in any way it can.

June 1: HEW submitted a desegregation plan for Nashville, Tennessee which, like the Austin plan used non-contiguous zones and extensive busing.

July 19: A federal court judge rejected the HEW plan for Austin, Texas and adopted instead the local district's plan. The Justice Department had until August 3 to file an appeal.

July 30: The Office of Education sent a memorandum to governors, state and local school superintendents, and HEW personnel concerning priorities under a Congressionally approved resolution continuing the funding of the Emergency School Assistance Program. The memorandum announced that transportation costs would be given very low priority and that local educational agencies were "expected to fund their transportation needs through state and local re-

sources." This memorandum was sent out after Dr. Goldberg himself had earlier told representatives of several groups that money available under the continuing resolution would be used to support additional busing.

August 3: The Justice Department appealed the Austin decision, but accompanied the appeal with a statement from President Nixon which made three points:

First, the District Court decision had to be appealed because it was inconsistent with recent Supreme Court decisions. However, "In the process of the appeal, the Justice Department will disavow [the HEW] plan on behalf of the government."

Second, the President stated:

"I am against busing as the term is commonly used in school desegregation cases. I have consistently opposed the busing of our nation's school children to achieve a racial balance, and I am opposed to the busing of children simply for the sake of busing. Further, while the Executive Branch will continue to enforce the orders of the court, including court ordered busing, I have instructed the Attorney General and the Secretary of Health, Education, and Welfare that they are to work with individual school districts to hold busing to the minimum required by law."

Third, the Administration would submit an amendment to the Emergency School Assistance Act, passed by the Senate but still before the House of Representatives, to prohibit the expenditure of any of those funds for busing.

August 11: Presidential Press Secretary Ziegler disclosed that the President had told the Justice Department and HEW, orally and in writing, to carry out their school desegregation responsibilities "whenever possible without the use of busing." This he topped off with a threat to bureaucrats:

"Those who work within the government are going to be responsive. Those who are not responsive quite possibly will find themselves in other assignments, and quite possibly in assignments not in the Federal Government."

In his pronouncement Mr. Ziegler failed to make clear that Secretary Richardson and Attorney General Mitchell had both approved the Austin desegregation plan. The White House staff had also reviewed the plan, so it must be assumed that they at least had not disapproved it.

August 12: The U.S. Commission on Civil Rights strongly condemned the President's August 3 statement, saying "What the nation needed was a call to duty. Unfortunately, the President's statement almost certainly will have the opposite effect . . . of undermining the desegregation effort."

August 18: The Justice Department asked for a delay in the implementing of an extensive busing plan in Corpus Christi, Texas—a plan drawn up and submitted by HEW 12 weeks earlier. Corpus Christi is 50 per cent Mexican-American and 5 per cent black. Justice Black granted a short delay the next day.

August 19: HEW Office for Civil Rights initiated enforcement proceedings against Prince George's County, Maryland for failure to desegregate according to the requirements of the *Swann v. Charlotte-Mecklenburg* decision.

August 31: Chief Justice Burger refused on technical grounds to stay a racial balance plan for Winston-Salem, North Carolina. Instead he took the unusual step of clarifying the *Swann* decision. He said that if lower courts "read this court's opinions as requiring a fixed racial balance or quota they would appear to have overlooked specific language" in the *Swann* opinion. Copies of this "clarification" were sent routinely to federal judges with a notation that it was for their "personal attention" followed by the initials "WEB." Some judges were reported to be insulted and distressed by the Chief Justice's "guidance."

September 13: Secretary Richardson said in

a press conference, "In the situations where busing is being required now by court orders, by voluntary plans that have been negotiated with HEW, the amount of busing required is necessary in order to eliminate the vestiges of a dual school system. That doesn't mean—as Chief Justice Burger has reemphasized—that the busing is being required in order to achieve racial balance. It is to eliminate the vestiges of the officially required segregation under old laws."

November 7: Ronald Ziegler announced that on November 5 President Nixon telephoned House Minority Leader Gerald Ford to congratulate House Republican leaders on the anti-busing amendments attached to the school desegregation aid bill that week. The Administration did nothing to prevent the House approval of the anti-civil rights amendments added to the higher education bill. President Nixon, in fact, was the chief advocate of one of the amendments. (*Washington Post* 11-7-71)

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January 6: An Office of Education official wrote the head of the Florida School Desegregation Consulting Center stating that the Center could not draw up a desegregation plan requested by a federal judge for Memphis, Tennessee. He said the Center can only draw plans at the request of a local school district. This was a new policy. HEW funded Centers like the Florida one have drawn hundreds of plans including the one for Austin, Texas which was withdrawn on August 3.

January 20: In his State of the Union Message, President Nixon said he opposed "unnecessary busing for the sole purpose of achieving an arbitrary racial balance."

February 14: President Nixon met with Congressional proponents of a constitutional amendment to prohibit busing. While he declined to endorse such an amendment for the time being, he said, according to his press secretary, "We do have a national problem, we are not going to leave the situation as it is . . . we are looking for a remedy." Ziegler characterized the problem as ". . . a situation where there is court-ordered busing of such magnitude that it is widely believed to be counterproductive to the children of this nation."

Mr. HAWKINS, following that, I would like to have inserted also a statement contained in a telegram to the President prior to his educational message in which the leaders of prominent national organizations have pleaded with him to refrain from the type of divisive tactics he employed.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

TELEGRAM TO MR. NIXON

MARCH 13, 1972.

DEAR MR. PRESIDENT: We understand that you plan to issue shortly a comprehensive statement on your administration's position on educational policy, including racial segregation and bussing in the nation's public schools.

Since you met, in a well publicized meeting, with those favoring a constitutional amendment to prohibit bussing and to halt desegregation progress, we feel it is only fair that you meet with us at your earliest convenience, and before adoption or dissemination of any school policy. We wish to discuss with you our strong views that:

1. Racial isolation of our children—black and white—in our nation's schools is an educational and legal wrong;
2. Every reasonable means should be employed to end such racial isolation including bussing;
3. The issue at hand is compliance with the law. The constitutional rights of black school

children should not be subjected to the political needs of the moment;

4. Our schools are our children's first major involvement with our public institutions and to permit them to incorporate and reflect residential racial discrimination is no less indefensible, legally and educationally, than to fail to eliminate, root and branch, vestiges of official discrimination; and

5. The constitutional rights of school children and quality education are the major issues facing us. Neither can be ignored or achieved by endless debate on peripheral issues like bussing. Black school children should no longer be required to wait for their achievement or to bear a disproportionate burden in their achievement because of America's inability or unwillingness to provide equally for all our children. What is called for now is strong moral presidential leadership counselling compliance with the law as decreed by the Courts of our land rather than defiance and backtracking.

Dr. Ralph Abernathy, President, Southern Christian Leadership Conference, 334 Auburn Avenue, NE, Atlanta, Georgia 30312.

Jack Greenberg, Executive Director, NAACP Legal Defense and Educational Fund, Inc., Ten Columbus Circle, New York, New York 10019.

M. Carl Holman, President, The National Urban Coalition, 2100 M Street, N.W., Washington, D.C. 20037.

Dorothy Height, National Council of Negro Women, 1346 Connecticut Avenue, N.W., Washington, D.C., 20036.

Vernon Jordan, Executive Director, National Urban League, 55 East 52nd Street, New York, New York.

Bayard Rustin, Executive Director, A. Philip Randolph Institute, 260 Park Avenue, South, New York City, New York 10010.

Roy Wilkins, Executive Director, NAACP, 1790 Broadway, New York, New York 10019.

Mr. HAWKINS. Mr. Speaker, while attempting to project an antisegregation public posture, it is the policy of this administration to "pay off" the maintenance of black ghetto schools as a means of avoiding the legal and moral responsibilities of implementing and enforcing constitutional rights.

The President gives the impression of creating a new policy and making available new Federal funds for what he calls "quality" education. As a matter of fact he is merely bending along with the winds of political pressures and reemphasizing "separate and unequal" schools under the guise of so-called compensatory education.

Despite his own admission that conclusive evidence to support compensatory programs is not available, he is willing to ignore constitutional requirements on the nebulous basis that by spending \$300 per child, equal educational opportunities can be achieved.

Actually, the President is resting his case on the racial-inferiority concept of "cultural deprivation" that assumes that black children are deficient and not their schools. He ignores the vast amount of data available that support the theory of the socioeconomic composition of the student body being more important to student achievement than such inputs as class size, teachers, and expensive physical facilities. He is willing to take the costly and wasteful road for the political mileage.

This is not to conclude that only by integration can any improvement be made. The problem is how, if not by desegregating our schools, and at what cost? And who is going to pay it?

It must be obvious that a 3 to 4 percent annual inflation rate, it would require much more than \$2.5 billions in new money merely to repair the monetary policy damage to our schools.

Even more, successful compensation education will require structural and re-organizational changes in school systems, a vast amount of community control in decisionmaking, and three to four times more money than is now being expended. In addition we would have to address ourselves to both racism in our society and revolutionary changes in the power structure. That all this is about to happen is as unlikely as a snowstorm in Washington in the summertime.

Even restricting the problem to cost alone, would involve an expenditure three times the current level on title I—ESEA—or about \$3.5–4 billion, plus strengthening teacher personnel, and capital expenditures for many more classrooms. The total has been estimated to exceed \$15 billion a year and with no assurance of substantial and lasting success.

In partial recognition of this cost the President proposes to rescue only about a fifth of the target population of disadvantaged children. This he calls "the critical mass" concept of confining the benefits to fit into a Federal outlay of \$2.5 billion. This raises a curious legal question as to the constitutional rights of the ignored children who will be denied even compensatory education.

It is this brutalizing assault on children we know to be in need of educational and constitutional protection that constitutes the danger in Nixon's political expediency. His words of sophistry that "conscience and the Constitution both require that no child should be denied equal educational opportunity" are revealed as a sham and a ploy without substance, with no expectation of fulfillment.

The President's proposals have set us on a dangerous course of confrontation that leads to disunity, despair, and even violence. In a period which calls for greatness, he has abdicated to the bigots and political demagogues. It is now left to the Congress to lead. And, I submit, Mr. Speaker, this is our opportunity and responsibility if we would uphold the Constitution and move our country ahead.

Mr. STOKES. Mr. Speaker, I thank the gentleman from California for his contribution.

Mr. Speaker, I now yield to the distinguished gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN. Mr. Speaker, I want to commend the distinguished gentleman from Ohio for arranging this special order so that we would have at least a moment of rationality on this particular subject.

Mr. Speaker, I ask unanimous consent at this time to place in the Record a number of editorials which have vigorously opposed the recent statements on this subject by the President. The Boston Globe, the Milwaukee Journal, the Washington Post, the New York Times, and many others have criticized as incredible and unbelievable, President Nixon's statements.

The SPEAKER pro tempore (Mr. LINK). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The material referred to follows:

[From the New York Times, Mar. 18, 1972]

FALSE BUSING CRISIS

President Nixon has snatched the anti-busing ball off the muddy field of Florida primary politics and is trying to carry it to a November touchdown, whatever the price in national division. In his televised address Mr. Nixon rejected demands for a Constitutional amendment to ban school busing, not because it would trivialize the Constitution, but only because "it takes too long."

With a strident appeal for "action now" that lent a presidential imprimatur to the hysteria already distorting this issue, Mr. Nixon has asked Congress to pass legislation that would "call an immediate halt to all new busing orders by Federal courts."

Far from adding perspective to the argument, the President further confuses it by inveighing against the busing of children over long distances to inferior schools "just to meet some social planner's concept of what is considered to be the correct racial balance. . . ." He wants to save a generation of children from the policies of those who are putting "primary emphasis on more busing rather than on better education."

All this paints an alarming picture of a reality that does not exist. No new legislation is required to prevent the courts from mandating racially balanced schools. In a unanimous ruling based on an opinion written by Chief Justice Burger last April, the Court upheld busing as a means of dismantling dual school systems. At the same time, however, the Court stated explicitly that it had neither mandated nor considered desirable the establishment of a racial balance or of any "fixed mathematical norms."

The Burger ruling stressed that, where there was no history of discrimination, "it might well be desirable to assign pupils to schools nearest their homes." It specifically questioned the wisdom and propriety of transporting children over long distances.

Thus, it is clear that the Supreme Court does not require the kind of indiscriminate busing Mr. Nixon wants to outlaw. No legislation is required to prohibit a Federal court from ordering what the Supreme Court has already declared undesirable. Mr. Nixon must surely know that the principal aim of desegregation is to allow children who have been confined to inferior schools to be given access to superior ones, and not vice versa. Many children moreover have long been bused over long distances, in order to maintain segregation.

The President's second proposal—the Equal Educational Opportunities Act of 1972—aims at improving schools now attended by poor children, in other words primarily the segregated schools. This is what desegregation was all about in the first place. It is in those districts which have failed in the nearly two decades since the historic Brown decision of 1954 either to desegregate or to improve the schools attended by black children that Federal courts have been driven to order busing.

There is little in the President's call for spending \$2.5 billion to upgrade poverty schools attended by black children that Federal courts have been driven to order busing.

There is little in the President's call for spending \$2.5 billion to upgrade poverty schools that is not already contained in the Elementary and Secondary Education Act of 1965. Regrettably, neither the Federal Government nor many state and local school authorities have shown the will and skill to put the act and the funds to effective use.

President Eisenhower made little secret of his personal coolness toward the 1954 desegregation ruling, but he enforced the law as defined by the Court to the limit of his Presidential power. When the Chief Executive now appeals for legislation to limit the authority of the judiciary, he tampers with the foundations of government under law; for he diminishes the capacity of the courts to gain voluntary and peaceful compliance for their rulings. Such compliance is never more vital than in times of deep social conflict. It is an asset not to be squandered for temporary political gain.

[From the Boston Globe, Mar. 18, 1972]

A TERRIBLE INJUSTICE

President Richard M. Nixon has, as he likes to say, made one thing perfectly clear in his 15-minute television address Thursday night and in his special message to Congress on Friday. He has adopted the busing issue as a prime vote-getter in his campaign for reelection.

The Southern strategy is in full bloom again. And what is not so clear is where this leaves Alabama Gov. George C. Wallace, who may have thought that he had the issue all to himself. Yet it is becoming quite clear where all this is leaving or could leave the nation—back in 1954, before the US Supreme Court ruled that racial segregation in the public schools is unconstitutional.

The President's action was both political and opportunistic—two adjectives that are not necessarily contradictory. Before the returns from Florida, Mr. Nixon had planned only a written message to Congress on busing. But with Wallace polling 42 percent, and 74 percent of Florida's votes favoring a constitutional amendment to ban school busing, the President changed his mind and took to the airwaves.

It was a blatant piece of free campaigning and the Democrats would do well to demand equal time.

"Busing" has become a code word, and the President surely had to know this and take advantage of it. Forty percent of all schoolchildren in this country are bused every day to regional, parochial or private schools with no protest at all. But when busing for purposes of racial balance is involved, it becomes another matter.

When the President took office he also took a solemn oath to "preserve, protect and defend" the Constitution, which vests in the Supreme Court the judicial power to interpret the Constitution. The Supreme Court has ruled—and unanimously—that busing is one of the tools—not the only tool, but one of them—that may be required to desegregate public schools.

Mr. Nixon has now gone farther than he went last Aug. 3 when he opposed "the busing of our nation's schoolchildren to achieve racial balance," which in itself seemed to call into question the Supreme Court's ruling.

He will now, he says, take action to stop such busing, because "a number of . . . lower Federal courts . . . have gone too far, in some cases beyond the requirements laid down by the Supreme Court in ordering massive busing to achieve racial balance." Doing all this by a constitutional amendment "deserves a thorough consideration by the Congress," he says, but has "a fatal flaw. It takes too long."

And so what he proposes is a law calling "an immediate halt to all new busing orders by Federal courts, a moratorium on new busing." It is bad enough for a Chief Executive to contravene the ruling of our highest court, but in this case he is asking the legislative branch of government to join him in dictating to the third branch established by the Constitution he is sworn to uphold.

And in what case pending in a lower Federal court would he have the Justice Department intervene, not on the side of the

Constitution, but on the side of those charged with violating it?

Would it be similar to the case involving Charlotte, N.C., and its surrounding county, decided last April 21 in a unanimous opinion written by Chief Justice Burger? In that case, the decision approved a new busing plan that meant less busing, not more, to achieve racial desegregation. Under the old, dual school busing system, pupils at all grade levels had averaged 15 miles of busing one way, for an hour a trip. Under the new system, an elementary school student would average only seven miles, and not more than 35 minutes.

And it is not alone a matter of how far Congress, already divided, will go on this spurious and divisive question of changing the law of the land. Mr. Nixon says he will have the Justice Department intervene in "selected cases" in which lower courts have exceeded Supreme Court requirements on busing.

Is he not willing to recognize that the final arbiter of lower court decisions that exceed its own is the highest court itself, and that so intervening in the judicial process is to load the judicial dice?

No amount of words, under such attractive headings as "The Equal Educational Opportunities Act of 1972," can hide the terrible injustice of what is being proposed. All in all, it was a demeaning day for our country.

[From the Washington Post, Mar. 18, 1972]

MR. NIXON ON SCHOOLS AND RACE

In his address to the nation on Thursday evening, Mr. Nixon played fast and loose with the hopes of two quite different constituencies—those committed to an immediate rollback of busing orders, and those committed to the pursuit of quality desegregated education. When you have read the documents the White House withheld until the morning after the President's public address and when you consider that those documents—draft legislation and the rest—are meant to fulfill the expectations the President raised, you can understand why the fine print was kept out of view for a day.

The President's proposed moratorium on more busing, for instance, would, if enacted by Congress, leave busing previously ordered by the federal judiciary intact—the buses, like the caissons, would go rolling along. True, that much, at least, might have been divined from an attentive reading of Mr. Nixon's Thursday-night remarks. But the hoax played on those other Americans who took seriously Mr. Nixon's remarkable revelation that he had come up with an alternative to busing and one that would produce desegregation, is something else again. Busing, the President said, "is a bad means to a good end," and he went on: "The question, then, is 'How can we end segregation in way that does not result in more busing?'" He then announced to the nation that he had found the way. "The proposals I am sending to the Congress," he pledged, "provide an answer to that question." Well, they do not. There is nothing there. Mr. Nixon has neither found nor presented an answer to the question he raised. Rather he has recommended rejuggling some funds, having a pass at a court-curbing bill of questionable constitutionality, and enacting legislation that would ultimately inhibit the federal courts or administration agencies from remedying what are concluded to be illegal acts of segregation.

We shall return to the specific provisions of the legislation which Mr. Nixon has proposed. These are divided between two bills. The first which would remain in force only until the second had been enacted (or until July 1, 1973), if there were no action on the second bill) would forbid implementation of any new busing ordered by courts for the

purpose of desegregating schools. It is a highly dangerous and highly political maneuver—one that would interfere with the courts' capacity to fulfill their constitutional obligations and which would also presumably provide Mr. Nixon with political credit in certain antibusing circles and yet one which would offer no relief to those districts currently in the midst of implementing comprehensive busing orders.

The second bill fetchingly named the "Equal Educational Opportunities Act of 1972," rearranges funds (almost all of these already requested by the administration) so that some emphasis is put on aid to ghetto schools. So far as desegregation is concerned, it sticks fairly closely (with a few exceptions) to the definitions of illegal segregation that the Supreme Court and most of the lower federal courts have been using as the basis of busing orders. What it would change is the nature of available remedies. Busing of children below the sixth grade would be limited by a standard that would be different for each district and the standard would be wholly unrelated to the constitutional violation found. It would thus do nothing to achieve the uniform national policy Mr. Nixon has professed to be seeking. Busing of older children would be undertaken, as it now is by most courts, only as a last resort and if no lesser remedy will serve.

What is so disappointing—and so reckless—in all this is that Mr. Nixon's proposals sport with a desperate national need. Never mind that the reason the federal courts have increasingly been obliged to function as school boards is that the Nixon administration has systematically withdrawn executive branch support from implementation of the Civil Rights Act of 1964—it is true, as Mr. Nixon suggested, that the nation needs a uniform and wise national policy concerning desegregation that will see the courts, the Congress and the executive branch functioning together and to an agreed-upon end. And never mind that much of the progress in desegregation that the Nixon administration claims credit for was produced by its loss of court cases trying to inhibit desegregation—it is true that we have come to a point where better means are required to reach the "good end" of school desegregation.

But the President has done nothing to fulfill these desperate national needs. He has offered recommendations that at most will make them more apparent and perhaps less soluble. Black Americans and white Americans who have labored at some cost and some risks to "give life to the law" (in Mr. Nixon's phrase) have had the rug pulled out from under them. Those in affected districts who have argued that the law must be obeyed and that the commitment of the Brown decision of 1954 and the Civil Rights Act of 1964 must be fulfilled have been abandoned by the President. Blacks who had been led to believe since 1954 that this country's commitment to equality was real and irreversible have been given good reason now to doubt that it is either. The conflict between the federal judiciary and the other branches of government has likely been exacerbated, not helped or healed. Beneath the rhetoric, Mr. Nixon in fact said very little. It is amazing that he could manage at once to say so little and do so much harm.

[From the Washington Post, Mar. 22, 1972]
MORE ON THE PRESIDENT'S "ANTI-BUSING" PROGRAM

The President's mish mash of proposed "anti-busing" legislation has now gone to the Hill. It is, as we have already observed, fraudulent in its failure to provide even half the things the President has claimed for it, of questionable constitutionality so far as its court-curbing features are concerned, and disgraceful in the willingness it reveals to kick equality in the head for the sake of

short term personal political gain. For anyone who may imagine that the two legislative measures Mr. Nixon has proposed are to be taken seriously as an attempt to deal with the tormented problem of race and schools or that they reflect the end product of some consistently held belief regarding desegregation or "equal educational opportunity"—to use the elevating phrase—we think a little historic perspective may be in order. This most recent maneuver by Mr. Nixon can best be understood in relation to his administration's 2-year record on the legislation at hand.

We will leave aside that part of the record which is not specifically connected with this legislation—the incredible zigzags and zagzags on racial policy as a whole, the apparent compulsion to sport not just with constitutionally commanded principles and constitutionally protected rights, but also with the fate of so many schoolchildren and with that of so many school and community leaders who have been trying to act equitably and in good faith. For the measures Mr. Nixon has now sent to Congress relate specifically to his so-called emergency school aid act, legislation that grew out of a statement he made on school desegregation two years ago almost to the day.

Then, as now, the President was responding somewhat belatedly to the pressure of a confused and tension-filled situation which he had done much to create. He had done so by swinging his administration back and forth, by summarily going into court to slow down a desegregation order the administration had previously been supporting in court, by losing the case and bringing on a unanimous Supreme Court demand that desegregation be accomplished—and be accomplished forthwith. Subsequently, the Congress went into an acrimonious and inconclusive debate, threatening all manner of curbs on both the federal judiciary and the provisions of the Civil Rights Act of 1964. At about this point in the fracas, it was announced that Mr. Nixon would make a statement.

The presidential statement of March 24, 1970, contained a pledge to abide by the Supreme Court's rulings in these matters, and Mr. Nixon also disclosed that his administration had decided to recommend an expenditure over two years of \$1.5 billion "to be put . . . into programs for improving education in racially-impacted areas. North and South, and for assisting school districts in meeting special problems incident to court-ordered desegregation." Since it turned out that, among other things, the administration had neither decided where the money would come from nor how it was to be spent, another two months elapsed before the proposal was submitted to Congress. The House took its time and did not get around to passing the measure until winter. Without administration support, it appended an "anti-busing" proviso to the bill, one that would have prevented its funds from being used to support busing in certain situations. The Senate refused to accept this version and with administration guidance, advice, encouragement and support refashioned the bill into a much more integration-minded measure—and one from which any anti-busing provision was notably absent. With administration and joint leadership support, it passed the Senate 78 to 8.

That was in late spring of 1971. By summer, Mr. Nixon was abruptly to announce another turnabout. He now wished a stiff "anti-busing" provision to be put into the legislation, one that would prohibit the use of any funds for the purpose of busing—even busing that had been ordered by the courts and which affected districts had no choice but to pursue. The President revealed this latest swerve in the course of announcing that the Austin busing plan, which his administration had been in court trying to put into effect, was no longer the administra-

tion's plan. (Although it had been cleared personally with Attorney General Mitchell and Mr. Nixon's White House aides, the plan was now to be disparaged as the work of "bureaucrats.")

Despite the protests of school officials who believed that funds earmarked to aid in the process of desegregation could best be used by them to implement busing orders, the House put the Nixon "anti-busing" proviso into its new version of the bill, added a few even more stringent amendments and sent its handiwork back to the Senate. Mr. Nixon, who had congratulated Minority Leader Ford for his role in helping pass the whole "anti-busing" package, thereupon fell silent again. The administration observed the whole recent uproar in the Senate over the Griffin and other amendments with what it termed "benevolent neutrality"—first cousin, presumably, of "benign neglect." Only after a series of tense votes and reversals and after it had observed Minority Leader Scott fighting desperately to bring enough party members along to spare the bill Senator Griffin's embellishments and after a fairly decent Senate version of the bill had reached conference, did the President publicly speak or deign to give guidance. He had a whole new set of ideas he told the world Thursday night—some of them more regressive than the worst features of the House-passed bill.

As the congressional rematch gets underway, it seems to us important that a few things be held in mind. One is that "busing" is a fake issue—and not just because of the patent fakery with which the administration has been manipulating it. For it is not "busing" that Mr. Nixon is seeking to undermine by this program, but rather the integrity of the courts, the vitality of the constitution, and the commitment this country has long since made—or was thought to have made—to the rescue of those black schoolchildren who are trapped in an environment which must destroy them and of which the schools are a single, but essential part. He is not alone in his instinct for retreat. You hear a lot of scholastic argument from others these days about how test scores show that this won't work or that won't work and about how the school can't do it all and about how money isn't "the answer" or integration isn't "the answer"—and in the name of this exquisite polemical stalemate a monstrous national cop-out is being justified. That there is no single universally applicable or desirable method for meeting our constitutional social responsibilities surely does not suggest that we should merely forget them. But that is the course Mr. Nixon has now urged on the country. It will require the efforts of a lot of brave and wise men in Congress to reject what he has asked.

[From the Milwaukee Journal, Mar. 17, 1972]

LEADING THE COUNTRY BACKWARD

President Nixon's highly political television statement on school bussing was a confusion of doubletalk. We already knew that he opposed bussing, but where does our leader lead us from there?

He sidestepped the question of constitutional amendment to stop bussing. He said Congress should thoroughly consider it, but that its fatal flaw is that it would take too long to accomplish. Thus, he permits the belief that he favors a constitutional amendment without actually going on record in support of one.

Nixon correctly noted that some lower federal court orders for bussing had gone beyond what the Supreme Court has so far specifically required. That, of course, is in the nature of the court system. It is misleading to imply, as Nixon did, that the Supreme Court would necessarily declare those orders invalid. In fact, the Supreme Court so far has refused to do that.

In asking Congress to declare a moratorium on all new court ordered bussing, Nixon raises

once again, but does not answer, the question whether Congress can stop the courts from enforcing the Constitution. Congress cannot, and the Senate specifically rejected the idea in finally voting down the Griffin amendment. Even some of busing's strongest opponents among those pressing for a constitutional amendment say that Congress through legislation cannot do it.

Nixon says, perhaps correctly, that a majority of Americans oppose busing while favoring continued desegregation. The question then, he says, is "How can we end segregation in a way that does not result in more busing?" He did not answer the question. Instead, the legislative proposal he outlined on TV is nothing more than warmed over compensatory education—the old idea of improving education in existing, racially isolated schools. Where is he leading us, back to "separate but equal," back before 1954, when the Supreme Court declared "separate but equal" to be unequal inherently.

And how, instead of leading the fight for desegregation and court ordered integration, the Justice Department is to be sent into the battle against busing for that purpose. After 18 years it is to reverse its field and take us backward.

As for Nixon's \$2.5 billion concentration of federal funds on improving education in poor urban and rural schools, it is welcome, and in fact the government is already doing much of that. But it has nothing to do with the question how, specifically, he plans to "provide better education for every child in America in a desegregated school system," as he promised early in his speech.

The president ended his address by saying that the way we handle this complex issue "is a supreme test of the character, the responsibility and the decency of the American people." Thursday night he flunked.

Mr. DRINAN. Mr. Speaker, I would also ask unanimous consent to insert at this point in the RECORD an article by Carl T. Rowan in the Washington Evening Star of March 22, with the title "Busing Stand a Sad Chapter in U.S. History."

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The material referred to follows:

BUSING STAND A SAD CHAPTER IN U.S. HISTORY

(By Carl T. Rowan)

For many reasons, personal and professional, I have strained to find something good to say about President Nixon's latest pronouncement on school busing. But I am driven to the conclusion that the President's proposals mark one of the saddest chapters in this nation's history.

A periodically glorious campaign to make this one society of mutual admiration and respect, which began full-force back in the 30's, has been dragged to an end. For the first time in half a century the President of the United States has arrayed himself and the immense powers of the executive branch on the side of "separate but equal." He is decreeing generations more in which the poor, the have-nots, wind up without a remote chance to succeed in that race we call the pursuit of happiness.

Nixon turned some neat phrases about integration and equality of opportunity, but they can never camouflage the truth that he was retreating before the charge of George Wallace, bending to the howl of the mob, both of whom he unwittingly armed when he put the phrase "forced busing" into the language.

The White House may call it a "libel" on

the American people, but the naked truth is that bigotry is now riding high in this country, so high that even the President is crowded into a position where he appears to be either its prisoner or its ally.

Nixon beseeches Congress to direct the courts not to order any more busing for racial balance. The President must know that he cannot seize the schools any more than Harry Truman could seize the steel mills in the face of a disapproving court. Congress simply cannot forbid federal constitutional rights of this nation's children. And let no one forget that busing is simply a form of relief to children who have been subjected to a panoply of officially sanctioned injustices.

Nixon may believe that his "strict constructionist" Supreme Court will go along meekly with whatever Congress orders, but I rather suspect that even his most conservative appointees will see the dangers of this meat-cleaver attack on the judicial branch.

Millions of black Americans find bitterly amusing Nixon's argument that a constitutional amendment would "take too long" and leave thousands of youngsters to endure busing next year.

Where has Nixon been during the 17 years and 10 months since the *Brown vs. Board of Education* decision when black parents and children were screaming that "it takes too long" to escape the discriminations and humiliations of Jim Crow schools that our highest court had outlawed?

Justice delayed was justice forever denied to millions of black kids who finished their entire public schooling without getting one iota of judicial relief. Suddenly, when it comes to canceling their late relief, the White House finds that time is of the essence!

The truth is that from Wild Goose, Minn., to Sloppy Gulch, Fla., the school buses will roll on, with more than 18 million children aboard, from now until Richard Nixon is just a name in the history books. Because busing is the passport of white children to equal education. The record will show that the only buses derailed were those carrying black children toward a reasonable chance to secure their American birthright.

I know Nixon proposes to mollify minority and poor children with his "Equal Educational Opportunities Act of 1972" and a \$2.5 billion expenditure.

Even if we give the President credit for the most egalitarian of intentions (which I frankly find it hard to do), there are some dismaying flaws to his proposals:

He is offering a warmed-over "compensatory education" scheme with extra financing from unnamed sources. I have documented in previous columns how earlier outlays of billions for educating the deprived and speeding desegregation wound up in swimming pools and fancy frills for affluent whites. Until the White House spells out the guarantees that vast new money will actually be spent to benefit the poor, experience dictates that we regard the new scheme as a pretty piece of wool to be spread over gullible eyes.

Even if the government does pour some money into neighborhoods occupied by blacks, Puerto Ricans, Indians, it would still be a reversion to "separate but equal." It would scarcely differ from 1952 and 1953 when legislatures in South Carolina and other Southern states were pumping money into showcase schools for blacks (after generations of abominable neglect) to try to head off the outlawing of Jim Crow.

Nixon has to know that allocating \$2.5 billion to remedy the plight of schools for the poor is like weeping into the Pacific Ocean in an attempt to make it run over. He must know that however flamboyant the gestures toward the ghettos may now be, there is absolutely no possibility of equal education opportunity if you keep the poor, black, brown and red in separate schools while the rich and influential bask in the sanctuaries of their "neighborhood" emporia

of education. Money flows toward affluence—and influence.

Much of the nation wants to kid itself. But some of us have to live with the reality that Nixon has asked Congress to underwrite an educational setup that guarantees this country remaining two nations, quite divisible, one white and one black, with liberty and justice for some.

Almost all of us will live to rue this sad interlude in the life of an already too troubled society.

Mr. DRINAN. Mr. Speaker, it has now been 17 years and 10 months since the *Brown* decision, when the Supreme Court ruled that with all deliberate speed there should be integrated schools. Now, 17 years and 10 months afterwards we have the President giving an address on this subject in which he never once mentions the term integrated. He asks, rather, that we have a moratorium on integration for 2 more years.

This raises a most fundamental moral and constitutional issue: Does this proposal constitute an unlawful invasion of the Federal Courts' jurisdiction and involve a violation of the doctrine of separation of powers? I am certain that scholars and others will agree that the President has unlawfully confronted the Federal Courts of this country.

Contrary to what the President has said, the courts have not ordered massive busing to establish racial balance. Not a single example of such judicial activity has been cited by the President nor by anyone who has supported his particular viewpoint. Not a single decision has been cited, even though in his address the President said at least three or four times that there have been judicial decisions which are unreasonable.

There is specific judicial protection against any unreasonable busing decisions given by Chief Justice Burger in the *Swann* decision of April 20, 1971, and I cite the very language of the Chief Justice:

We find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.

Chief Justice Burger goes on to say:

Busing will not be allowed to significantly impinge on the educational process.

The Chief Justice went on to define what unreasonable busing is, and these are his words:

When the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process...

It seems to me that the alleged rights sought to be protected by the President have already been precisely anticipated by the U.S. Supreme Court. Every decision requiring busing is appealable. If the people at the local level think that a decision is unreasonably burdensome, they have their remedy, and their remedy should not be in the Congress; it should be by appeal through the normal, established, legal process, in the courts.

The President is asking the Congress now to join him in fundamentally eroding the authority of the courts and the Constitution.

It seems to me that now as never be-

fore we have to have rationality and we, in the Congress, have to deescalate continually the rhetoric that has reached the White House.

The President of the United States has said that busing is a bad means to a good end. But he gave no good means to that end, which presumably still is good, in his judgment.

As has been noted here previously, more than 18 million children every day go to school on a bus, and a very tiny minority of that group go there by reason of court-ordered integration.

I will conclude, Mr. Speaker, by quoting the very sound and wise words of Senator MONDALE, chairman of the Senate Select Committee on Equal Educational Opportunity.

He cut through all the rhetoric and put it calmly this way:

We have only two choices; we can assume our share of the burden. We can begin to ask the right questions—not whether we should resist school desegregation, but how we can best work to assure that school integration is conducted in a sensible, educationally beneficial manner. We can fulfill the commitment to equality of opportunity which we have made in the past. We can build on the hopeful examples of successful integration, help the courts avoid educational mistakes, and make school desegregation work.

Or we can stand in the schoolhouse door. We can resist the rulings of the Supreme Court and the advice of educators. We can abandon all the efforts of the past 17 years to eliminate discrimination and end racism—in pursuit of a policy of national resistance toward what the Constitution requires and what each of us knows to be morally right.

I am afraid, Mr. Speaker—and I say it with sorrow—that the President of the United States has chosen to stand in the schoolhouse door.

Mr. STOKES. Mr. Speaker, I thank the gentleman from Massachusetts for his contribution.

Mr. DELLUMS. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to my colleague, the gentleman from California.

Mr. DELLUMS. Mr. Speaker, I thank the gentleman. I would like to commend him for obtaining this special order on an issue which unfortunately has become—by virtue of the President's involvement and utilization of the politics of fear, divisiveness and expediency—one of the No. 1 questions today in America.

Yet when we are dealing with the fact that busing has so become the No. 1 issue in America, we are still bombing and maiming and killing in Vietnam, we still have mass unemployment, inadequate housing, inadequate health care and all the other critical problems that daily affect human beings in this country, I find it a major travesty in human justice—one that reflects very negatively on the politics of this country.

At the risk perhaps of being repetitious, I want only to make some brief remarks.

In addressing myself to the President's proposal: First, I find it ludicrous that the President of the United States can engage in implicit intimidation of the lower courts. I think that issue should

be at least addressed and focused upon for and by the American people.

Second, when the President suggests legislation that would limit the ability of the judiciary to do the job that it is constitutionally charged to do, we walk into a very dangerous area of separation of powers, which, in my estimation, must be maintained if there is to be any humanity or any sense of democracy in this country.

Third, the President's proposal that we spend \$2.5 billion to bring some level of equality of education to those who are educationally deprived and even harmed in America—I find that also ludicrous.

It was interesting that the President never mentioned where he was going to obtain the \$2.5 billion. I think we can speculate with great accuracy. The \$2.5 billion will come out of the pockets and out of the hands of the poor who would have received that \$2.5 billion in some other form, except for expediency by the President who now comes rushing to the aid of the country—and interestingly enough—during a presidential election year.

When you place that \$2.5 billion a year to elevate the level of education for millions of young people in this country in juxtaposition to \$2.5 billion that we are spending each year to fight squalor and poverty, it becomes only enough money to address itself to, perhaps, 3 percent to 5 percent of the total needs of the human beings who live in dire poverty. But we can quickly release \$2.5 billion to enhance the level of education in this country.

Again, it only points to expediency, and not for real relief of the human needs that exist in America today.

Finally, I close with a few remarks that you and I as Members of the Congressional Black Caucus as elected Members of this body and who are ostensibly concerned about human justice and human rights should—and must—oppose every single effort to pass antibusing legislation on the floor of the Congress.

First, any constitutional amendment that goes to the issue of limiting busing would be, in my estimation, a very dangerous precedent. When the U.S. Congress infringes upon the rights of the judiciary with a constitutional amendment, what makes us believe that next week, next month, or next year it would not limit other human rights and other human justices?

When we start such a precedent, it is very difficult to turn it around.

Second, I do not believe that this body should be involved in the process of limiting the powers of the judiciary as laid out in the Constitution of the United States. Whether we like many of the decisions that the Supreme Court has made or not, whatever human liberties we are experiencing in this country have been because the Supreme Court has been willing to legislate through the judicial process. Why? Because, over the years, we in this body or in the other body have not been strong enough or committed enough to legislate in very controversial areas.

Perhaps that is because some of us are too preoccupied with being re-

lected to office rather than in solving human problems.

Third, any effort to pass legislation which would cut off the limitation of Federal funds into a community for this purpose also strikes at title V, section (b) of the 1964 Civil Rights Act. That act is not the most powerful instrument in this country, but it certainly provides a handle by which some of us can stop the flow of Federal funds into communities where discrimination exists. I think this instrument should be an instrument that is not damaged.

So I would urge all of my colleagues to think very clearly about the constitutional implications, the issue of the separation of powers, and the lack of funds which the President has proposed in terms dealing with this very grave problem. If he was talking about \$20.5 billion a year, maybe we would be in the ball park.

Fourth, it would be my hope that I would be a Member of this body where the overwhelming majority of the people here were focused on the major and critical problems that are facing the people of this country, black and white, red and yellow, young and old, rather than continuing to project expediency and the divisiveness of an issue—busing—that should not be the No. 1 question in America.

I close by thanking the gentleman for his courage and articulateness in focusing on this serious issue, and I thank him for the opportunity he has afforded us to join him in his special order.

Mr. STOKES. I thank the gentleman from California for his remarks and his contribution to the special order.

I yield to the gentlewoman from New York (Mrs. ABZUG).

Mrs. ABZUG. Mr. Speaker, I want to join the gentleman in expressing my appreciation for his taking this special order so that others can join him in responding to a very serious question facing the Congress and the country.

Last Thursday the President calmly informed the Nation that busing as a means of assuring quality education for our children was no longer acceptable to his administration. While Mr. Nixon was really saying was that he wanted to go back to 1896 when the Supreme Court enunciated the doctrine of "separate but equal" in the case of Plessy against Ferguson. In so doing, he implied that the Supreme Court's 1954 decision in Brown against Board of Education, which held that separate facilities for black and white citizens were inherently unequal, should be ignored or overruled.

Furthermore, it is quite clear that the President denies the law of the land, the 1964 Civil Rights Act and other statutes enacted in the struggle to make equal opportunity a reality in the United States of America.

I do not believe that the American people will be misled by this attempt to dupe them. Therefore, I believe it becomes the responsibility of Representatives in Congress to oppose vigorously the proposals of the President.

In asking for a moratorium on busing, and allegedly asking for billions of dollars to promote a so-called "equal

educational opportunity" program, the President is callously overlooking a fact which the courts accepted 20 years ago and which most Americans, in the calm of ordinary discussion, recognize today—that separate facilities are inherently unequal.

During the past 25 years thousands of Americans—white and black—have walked on picket lines, sat in lunch counters, and paraded in marches in the effort to realize the goal of an integrated, quality school system and indeed, an integrated society. In recent years their efforts have begun to fruition in that Congress and the courts have acted by law to provide equality for all Americans. It is important to keep in mind that those of us who are speaking here today are supporting busing and other methods of integration not merely for the sake of integration, but because it is crystal clear that only when our schools are integrated will there be quality educational opportunity for both black and white students, and that only this can bring about hope for political and social equality for black and white students.

Busing is a means, and not the only means, to achieve the end of equal, quality education. It is where necessary, an acceptable means and one which we cannot abandon merely because we are in an election year.

I want to note at this point my opinion that any action taken by Congress to restrict the power of the courts to order busing is unconstitutional. Article III of the Constitution empowers the Congress to limit the jurisdiction of the Federal courts, but that power is circumscribed by the due process clause of the fifth amendment; that is to say, Congress may not exercise its article III authority in a manner which will deprive any person of due process of law. It is plain that Congress cannot prevent the Federal courts from considering constitutional questions. It follows quite naturally from this that the courts cannot be prevented from ordering whatever remedies are necessary and proper to vindicate these rights. As Justices Rutledge and Murphy said in *Yakus v. United States*, 321 U.S. 414 (1944):

Whenever the judicial power is called into play [as it must be in a constitutional case], it is responsible directly to the fundamental law and no other authority can intervene to force or authorize the judicial body to disregard it.

Since the question of equal protection of the laws is a constitutional one, the Federal courts automatically have jurisdiction to consider it; having this jurisdiction, they must have the power to order whatever remedies are necessary to effectuate it.

What President Nixon proposes as a "new" substitute for quality integrated education is in fact not at all new. The \$2.5 billion which he seeks in Federal funding for inner-city schools has long been authorized under title I of the Elementary and Secondary Education Act.

We cannot turn our backs on the effort to rectify the effects of 250 years of slavery and an additional 100 years of a more subtle bondage.

We cannot turn our backs on such court decisions as *Brown* against Board of Education and *Swann* against *Charlotte-Mecklenburg*, and such enacted and accepted statutes as the Civil Rights Act of 1964. This is the law of the land, and it should be the law of the land, and it must be the law of the land. What we must do now is to see that it is carried out.

The President is using the issue of "busing" as both a code word and a smokescreen for his real issue—opposition to integrated and equal opportunity in education, in housing, and in employment. Congress must recognize that and fight it as such.

Mr. STOKES. Mr. Speaker, I thank the gentlewoman from New York for her contribution to this special order.

Mr. Speaker, I yield to the distinguished gentleman from Massachusetts (Mr. HARRINGTON).

Mr. HARRINGTON. Mr. Speaker, what we need today is not just speaking out against President Nixon's message on busing, though I intend to speak out each day on that moral outrage. What we need now is action by a courageous Congress to thwart its effect on the courts, and on the Nation. It is a policy which will continue the hatred and disharmony in the nation between those of the white race, and those of the black. It is a policy based on a remarkable misunderstanding of the constitutional principles involved in recent court cases from *Denver* to *Pontiac* to *Richmond*. And it is a policy which threatens to throw this Government into a constitutional crisis pitting the power of the judiciary against that of the Congress. The President has sought to commit the Nation to a dangerous policy designed to produce maximum political effect with minimum positive results for quality education either in the cities, or in the suburbs. Quality education can never be separate education. Separate education is inherently unequal, whether caused by law or not. And unequal educational opportunities is indefensible from a moral if not constitutional standpoint.

There is no confusion in the courts about busing. The Supreme Court set out in *Swann* against *Charlotte-Mecklenburg* and *Taylor* against Board of Education exactly what the Constitution mandates. The Court has not insisted upon racial balance. What it does insist upon is that no governmental action be taken on any level which furthers school segregation, and that where such action has been taken in the past, the Government in question must take remedial action to undo its segregationist efforts.

Emerging from the President's message is a commitment to separate but equal educational opportunities, a philosophy rejected time and again since *Brown* in 1954. In accepting that antique premise, the President demonstrates an inexcusable naivete when he claims that the schools should not serve a major social purpose. Schools are never neutral—never. They are the most potent social force of any nation. In segregated areas, they serve to reinforce a never-ending cycle whereby minority and low-income families are forced to live, eat, recreate,

and educate in a confined lifestyle which is stifling to their humanity and certainly abhorrent to any sense of social justice. Government complicity in this segregation cannot be tolerated.

From a budgetary standpoint, the President's message is a fraud. A renaming of \$2.5 billion already in his 1973 budget will not provide even a beginning toward the goal of acceptable urban education. That sum includes a title I commitment \$4.6 billion below the congressional authorization level for title I programs under the Elementary and Secondary Education Act, and will reach less than half of the pupils in this country between the ages of 5 and 17 who should qualify for supplemental assistance. Past administrative actions on education round out the picture: Appropriations in excess of the President's inadequate requests have met with two stern vetoes. For him now to talk of quality education is fraud.

Finally, Mr. Speaker, I most resent the political context of the busing message, with its bow to pressure from those who would seek their own self-interest at the expense of social progress and equal opportunity. It is a cheap political ploy against the courts and the Constitution in an election year. And I resent being called an extremist by the President because of my support of integration and equal opportunity. That seems an irresponsible label for a man who says he is calling on the "collective wisdom and experience" of the Congress in dealing with the busing issue.

Mr. STOKES. I thank the distinguished gentleman from Massachusetts for an excellent contribution to this subject.

Mr. CORMAN. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to the distinguished gentleman from California (Mr. CORMAN).

Mr. CORMAN. I thank the gentleman for yielding.

I join my colleagues in commending the gentleman for taking this special order. The matter we discuss is of utmost importance to this Nation.

I remember some 7 years ago, when the leadership of this Nation was in other hands, the President of the United States stood in this Chamber and said, "We shall overcome." He meant that we would overcome the vestiges of human slavery in this Nation, racial segregation.

He devoted much of his energy, effort and time as our President in helping to overcome segregation.

In 1967, when much of this Nation erupted in violence and there was an obvious social sickness in our land, he asked 11 of us to look as carefully as we could at what happened, why it happened, and what ought to be done about it. We unanimously concluded that this Nation would never free itself from the threat of that madness, so long as we maintained a dual society.

We also concluded that the next important point at which we must strike down this dual society was in our public schools.

There is no question but that every American is greatly affected by his edu-

cation, not only what he learns in school but what his experiences are in school. It is what the U.S. Supreme Court was saying in 1954. The Court was not concerned about whether a board of education was of good heart or of malicious intent. What the Court was looking at was little children who sat in classrooms and what happened to them. The Court said that if you isolate children by color, you are inherently unfair to them; you demean them and deprive them of equal education.

Many children who were born that year are finishing high school this year in racially segregated schools. Their right to equal educational opportunity is gone forever. There is nothing we can do about that.

What does the President now suggest we do about 5-year-olds whose educational experience is ahead of them? He seems to imply that we must stop any opportunity those 5-year-olds have of going into a U.S. court and saving themselves from a racially segregated school life.

But he goes on to plead for Federal funds to, as he puts it, offer for the first time real equal educational opportunities.

A willingness to spend any Federal money on aid to elementary and secondary education is a change from President Nixon's historic position. One might reasonably assume that school children in this country were as bad off in 1950 and 1960 in this regard as they are in 1972. It is a fact that in 1950 Congressman Nixon, as a member of the House Education and Labor Committee, cast a crucial vote to kill Federal aid to education. In 1960, then Vice President Nixon cast a tie-breaking vote in the Senate for the same purpose—to block Federal aid to education.

I do agree with the President that we must spend money now for quality education for every school child. This in no way alters the constitutional fact that racially segregated education is not and cannot be quality education.

Looking specifically at the President's moratorium proposal, to whom is he speaking and what is he saying? He is speaking to American children who have gone to court, pleaded their case, convinced a judge that they are being denied their constitutional rights, and have had their grievances redressed. This has happened in about 600 cases across this land. Richard Nixon now says to those children, "I, as your President, snatch from your hands that victory. I do not deny your rights or your need for help, but I, with the help of the Congress, will intervene to deny you your remedy."

The President misreads the Constitution. I believe he misreads the sense of fairness of the American people. Clearly no parent wants his own child bused to an inferior school. He does not want his child to walk to an inferior school. But clearly he does not want to impose on other children what he rejects for his own.

We were angered when we saw pictures a decade ago of grown people assaulting and spitting upon little girls entering integrated schools in Louisiana

for the first time. We saw little to be admired in a Governor who stood symbolically in the schoolhouse door. When we sort out carefully what President Nixon has said, we will realize that the President's adversary is not a judge, a bureaucrat, or an extreme social planner. Rather the President's adversary is a 5-year-old child, probably black, who wants a chance to live the American dream.

I have a young lady in my office who grew up under that old segregated system. I asked her to write for me what she thought about school desegregation. Her name is Winifred Burrell. I ask unanimous consent that I may include her remarks at this point in the RECORD.

THE SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

BUSING

In 1954, the Supreme Court of the United States ruled that "Separate educational facilities are inherently unequal" and ordered that desegregation of public institutions be accomplished "with all deliberate speed." It has been eighteen years since this landmark decision. *Brown v. Board of Education of Topeka*, and it appears that "all deliberate speed" is a slow deliberate process since the majority of our Nation's schools are still segregated. Very understandably, conditions in different localities, North-South, urban-rural, vary so widely that rigid rules could not be laid down to govern all situations. It was, therefore, left to the lower federal courts and/or local school districts to devise the means necessary to abolish segregated schools in a particular area. This, however, presented a major problem for the school districts simply because integration is not an easy matter. It is neither simple nor popular, and resistance to any plan or method could be expected. Finally, in 1969, the Supreme Court ruled that the time in which schools were to desegregate with "all deliberate speed" had expired and school systems were ordered to desegregate immediately. As a result, federal courts across the Nation ordered massive student busing, if necessary, as an immediate and economical remedy. Not unexpectedly, adverse public reaction spread rapidly and anti-busing forces moved swiftly to create an atmosphere of confusion and rebellion. Busing students, however, is not the total answer to the problems involved in integrating our schools, but it is a step forward toward the ending of segregated schools and the beginning of quality education for all.

Before the 1954 Supreme Court decision, Black and white students alike were bused to segregated facilities. Even today, forty percent of the Nation's public school children are being bused to and from their respective schools. Busing in itself has never been viewed as undesirable, but busing to achieve integration has been labeled as unconstitutional, unfair and unjust. It is, therefore, the word "integration" not "busing" that draws the thin line of distinction from acceptance. It is further noted that the basic need for busing as a tool to eliminate segregated schools is merely a direct result of segregated housing patterns. If the neighborhoods were integrated, the schools would automatically become integrated. This, unfortunately, is far from being realized.

To show the changes in housing patterns and school compositions, I cite my own experience as an example of the trend. In 1952 I was in the 7th grade when my family moved into a predominantly white neighborhood in Washington, D.C. A white junior

high school was situated approximately three blocks from our house. I was, however, compelled to attend a segregated junior high school in another section of town. This meant I had to walk past the white junior high school to use public transportation to attend a segregated school. By the time I graduated from junior high school, the Supreme Court decision had been handed down, and school officials used residential boundaries for the abolishment of separate institutions. During this period of time, however, this predominantly white neighborhood had rapidly diminished to a predominantly Black neighborhood and the all white junior high school was now integrated with an all Black community. It was, therefore, impossible to integrate two elements because you only had one component part. Specifically, the housing barrier has long been the contributing factor which justified a dual educational system. Busing, however, can be used to overcome this barrier and, thus, provide the fully integrated educational systems guaranteed by the law.

Busing will also ensure quality education for all, especially the Black student. Black students have been subjected to inferior education for decades. Studies have shown and proven that educational separation produces educational inequality. It is, therefore, essential that Black people be given the opportunity to enter the mainstream of American life, and quality education is a first step toward this end. Further, quality education is necessary for the national security and economic prosperity. But most important it will make possible the enrichment of an individual's life. Black students, traditionally, have been educated in schools where facilities and curricula are inadequate and by teachers who, themselves, often are products of the separate and unequal system in which they teach. Since Blacks have never been accepted as an equal part of this Nation in a society that rejects and attempts to dehumanize them, it is no wonder that they are ill-equipped to compete or adjust. It is, therefore, imperative that Blacks be afforded the opportunity to receive quality education no matter what the cost, and since busing is one of the methods devised to accomplish this, it should be used, when and where necessary, as a move toward the ending of unequal educational facilities in this country.

Busing, very simply, is only one device that can be implemented to ensure quality, integrated education. It cannot change the attitudes and minds of a society that has long believed in "separate but equal" educational systems. Even though quality education was a myth under the separate but equal statute, it was the intent of the Supreme Court to rectify this fallacy. It is unconscionable that this Republic committed since its inception, and written into the Constitution by which it is governed, to the principles of freedom, justice and human dignity for all its citizens, should continue to separate children in school simply because of the color of their skin. A child born in 1954 was given a great opportunity when the historic Supreme Court decision was handed down. This same child has now completed his high school education under the same conditions that prevailed at the time of his birth. Although the Supreme Court charted the course, separate educational facilities are still sanctioned in this country. Maybe the child born today will be afforded his inherent rights as a citizen as dictated by the Constitution.

Mr. STOKES. I thank the distinguished gentleman from California.

I now yield 1 minute to the distinguished gentleman from California (Mr. WALDIE).

Mr. WALDIE. I appreciate the gentleman yielding.

I commend the gentleman for bringing this matter before the House.

I am one sitting here today who is troubled and deeply troubled by conscience and, I think, my own questionable courage on the issue. My conscience has been, I think, clarified by what I listened to today, and I am encouraged. I wish there had been others in this House who were as troubled as I am and who are uncommitted, who would have been able to sit here today and listen to this debate. It is sad that but a handful of Members were on the floor during this presentation and most of them were already persuaded as to opposition to the President's proposal. Those not so persuaded might have learned.

Mr. STOKES. I thank all of my colleagues who have participated in this special order. I think you have rendered a real service on the part of the House and on the part of this Nation.

Mr. BURTON. Mr. Speaker, I would like to commend my colleagues for bringing some light to this issue which has, to date, generated a good deal of heat but all too little understanding.

I have received a number of communications from leaders in my community and in the Nation which will help to put this issue into some perspective. Excerpts of these letters follow:

Kathryn S. Blalock, president, League of Women Voters of San Francisco:

Thank you for your vote on March 8 against inclusion of strong anti-busing provision in the higher education bill . . . We cannot afford to eliminate any method which will achieve the goal of quality integrated education.

The Reverend James M. Purcell, co-chairman; Dr. Robert Bulkley, co-chairman; Rabbi Roger Herst, co-chairman, San Francisco Conference on Religion, Race, and Social Concerns:

We ought to tell you that we are opposed to the anti-busing amendment, however, because we are firmly committed to integrated schools and while we would want any school system to explore ways other than busing to achieve integration, we would not rule out busing.

The real issue, Congressman Burton, has not changed since 1954. It remains equal educational opportunity and the elimination of segregation and discrimination and we must use creative and imaginative means to achieve those ends. This means not foreclosing busing as a possibility.

Rev. John J. O'Connor, executive director, Catholic Social Service of San Francisco:

I am writing to urge you to refrain from signing the discharge petition on H.J. Res. 620. I feel this proposed Constitutional Amendment would strike down progress toward school integration.

Lucy Wilson Benson, president, League of Women Voters of the United States:

Vote against instructing conferees to insist on House busing amendment to Higher Education Bill S-659.

Clarence Mitchell, legislative chairman, Leadership Conference on Civil Rights:

On behalf of our 127 national organizations we urge you to oppose any effort to in-

struct Higher Education Act conferees on any anti-civil rights provisions.

Andrew J. Biemiller, director, Department of Legislation, AFL-CIO forwarding text of President George Meany's statement. The Meany statement reads:

The President's message on busing significantly omits any commitment on the part of his Administration to enforcing the law of the land—quality, integrated education for America's school children.

He does not commit his Administration to the expenditure of one penny in new money to improve the educational opportunities of disadvantaged children. The Elementary and Secondary Education Act—already on the books—authorizes in Title I far greater expenditures than the President is proposing. The Emergency School Aid Act—already passed by both the House and Senate—is the source of the rest of the money the President proposes spending. In fact, the \$2.5 billion the President talks about is far short of the authorized spending level in ESEA for the improvement of disadvantaged schools.

Ever since his inauguration, the President has consistently opposed increasing the appropriation for the program designed to improve schools attended by the disadvantaged.

He twice vetoed congressional efforts to increase federal funding of the nation's schools—including tens of millions of dollars for aid to disadvantaged schools. One of these vetoes was carried out in front of a national television audience.

Now the President is back on national television trying to convince the American people that he has changed his opinion on improving the educational opportunities of disadvantaged children. This is political chicanery.

No new legislation is needed to improve educational opportunities for the disadvantaged. An excellent law is already on the books. What is needed and what has been lacking, however, is Presidential leadership to encourage the Congress to increase the appropriations to their full authorized level.

Further, the "busing moratorium" President Nixon proposes is a cynical attempt to reward those who said "never," and to undermine the moral leadership of those citizens who endeavored to comply with the Constitution and the Supreme Court's 1954 decision.

The Administration has chosen a course that, at the least, is at the margin of constitutionality. The real loser in this Nixon-inspired constitutional confrontation will be the integrity of our legal system.

The Administration, while invoking the slogan "law and order," has repeatedly struck at the courts, which, since the time of John Marshall, have been regarded as the ultimate line of defense for constitutional liberty. It now proposes, in the guise of regulating the courts' jurisdiction, to deprive them of the power to enforce the 14th Amendment by busing orders designed to eradicate the last vestiges of the segregated "dual school" system, even where that is the only method sufficient to secure true desegregation. If the 14th Amendment can be deprived of its vitality in this way then none of our constitutional rights is secure.

The harm to the constitution is no less severe because the proposed legislation is of limited duration—to expire five months after the presidential election. For the rights in question are those of individual school children and once lost for any school year cannot be recaptured.

The AFL-CIO remains firm in its commitment to quality, integrated education. We are, therefore, opposed to the President's current political maneuvers on this question.

Mr. RYAN. Mr. Speaker, at a time when our Nation desperately needs firm moral leadership, the President has abdicated and aligned himself with those who would make political capital out of racial distrust and discord.

Instead of calmly reminding the American people that a clearly established line of Supreme Court decisions, starting with Brown against Board of Education in 1954, requires the integration of schools, and the use of busing where necessary to dismantle the dual school system, the President enunciated a new doctrine of nullification in his message on the busing of school children.

The legislative package the President has presented to Congress concerning busing is certainly designed to halt the progress achieved over the last two decades in eliminating the dual school system. The legislation presented by the President is both deceptive and of questionable constitutionality. In engaging in this maneuver, the President encourages the public to lose respect for the landmark Supreme Court decisions in this field and falsely raises hopes that the difficult problem of busing will now be solved. It is a sad day for this country when the actions of its Chief Executive encourage the citizenry to lose respect for the law.

Specifically, the President has proposed: first, a moratorium on all new or additional busing orders lasting through July 1, 1973, or until the passage of substantive legislation; second, the Equal Educational Opportunities Act of 1972 which would combine the already existing programs operating under parts of title I of the Elementary and Secondary Education Act and the proposed Emergency School Assistance Act, which is pending in Congress, to provide money for schools in poor neighborhoods and offer these impoverished districts some extra money, as a way of compensation for the lack of busing. This program, in other words, is a disguised throwback to the old Plessy against Ferguson doctrine of separate but equal school facilities, which the Supreme Court explicitly overruled in the 1954 Brown against Board of Education decision.

In so ruling the Court found that separate schools are inherently unequal, despite whatever monetary efforts might be expended on the black school system. That finding of the Court has been borne out in more recent studies of the education system. The massive report of James S. Coleman, of Johns Hopkins University, entitled "Equality of Educational Opportunity" suggests that the home environment is the best way to achieve good school performance, and that mixing of social and economic groups in schools leads to improvements in performance and is a much more promising approach than raising expenditures and facilities and teachers in largely segregated schools of poor communities.

Thus does the President attempt to implicitly reverse the Supreme Court and foster the unconstitutional concept of separate but equal schools. The Pres-

ident does not serve the country well by dancing to the tune of Gov. George Wallace on this issue. Moral leadership was what was required, and it was sadly not forthcoming.

The SPEAKER pro tempore. The time of the gentleman from Ohio (Mr. STOKES) has expired.

THE NIXON MANIFESTO—SEPARATE BUT EQUAL

(Mr. CLAY asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. CLAY. Mr. Speaker, the President has once again exploited the executive privilege of free public air waves. This time in a nationally televised speech, President Nixon disgracefully called for a return to public education as it existed prior to May 17, 1954. By appealing to the baser instincts in the American people, our President added fuel to the flames of racial hate which now engulfs our country. He started his defense of a separate but equal society on a false premise that U.S. district courts have been ordering "massive busing" for the purpose of racial balance. What might I ask, constitutes "massive busing?" Is it real or illusory? Does it exist in fact, or does it exist only in the minds of those who vehemently oppose the extension of full rights to all Americans?

The real issue, indeed the only issue at stake in the busing controversy, is that of race. The so-called evils of busing only become emotional monsters when that big yellow bus terminates at the little red schoolhouse which happens to have many black students enrolled. There is no such animal in the American educational system known as the "neighborhood school." Anyone who alludes to it is injecting a dimension into the debate which smacks of racism. The fact is, that more than 60 percent of all American children attending school today are arriving there by bus.

If our President were honest, if the majority of our citizens were honest on the question of busing—we would not be confronted today with the so-called solutions to the so-called evils of busing. If busing entails all the evils our President contends, such as creating serious risks to the health and safety of children; disrupting their educational process; and impinging significantly on their educational opportunity, then, our President is advancing the wrong solutions. I would think that our President would be advocating that no Federal funds be used to finance buses or schools where children are enrolled who live more than 3 miles from school. If indeed there is an existence of neighborhood schools, I see no reason for a child to attend a school more than 3 miles from home.

For the President of the United States to provide the forum and vehicle to create the climate for respectability of racists and racism is diabolism. His intentions must be held in suspect by any decent person who knows him and his past performances. In one breath he calls for a moratorium on all busing for racial balance and in the next proposes to spend

\$2.5 billion to provide equality education for minorities. It seems unbelievable to me that he could make such a statement in light of the fact that just 18 months ago in his veto message to the Congress he said, \$453 million for elementary and secondary education, handicapped, vocational and adult education, student college loans, and libraries was "the kind of big spending that is wrong for all the American people." In fact, his budget for fiscal 1972 included only \$1.85 billion for all elementary and secondary education. How then can any intelligent person believe that President Nixon is serious about spending a meager \$2.5 billion to improve the quality of education for minorities? A closer look at the \$2.5 billion which Nixon now proposes reveals no new commitment of funds but rather a "hold the line" effort in an attempt to spend the same amount as is now being spent.

Under President Nixon, we have witnessed the whole thrust of the 1960's to eliminate the degrading, dehumanizing effects of racism reversed. Under the Kennedy and Johnson administrations, racial and social injustices were confronted as moral and legal wrongs to be rooted out from our society. Neither Kennedy nor Johnson was reluctant to use the entire weight of the Presidential Office to embrace and promote the concept of racial equality. Unfortunately, President Nixon has chosen to follow the lead of men like Adolf Hitler and Woodrow Wilson. President Nixon prefers demagoguery to decency. He prefers to "bleed white" than to "lead right." If President Nixon is genuinely interested in improving the quality of education for the deprived, denied children of the ghetto, then he should use the resources of this great Government of ours to improve the quality of life in all aspects for them. He cannot support "economic discrimination" in suburban housing which is equated with racial discrimination and yet contend that ghetto children are being denied quality education because of the conditions under which they are forced to live. He is, in effect, responsible for them being forced to live under those conditions. The President opposes "forced" busing on the one hand but protects "forced" patterns of housing discrimination on the other.

He cannot shed tears for those same black children who are bused to suburban areas to receive quality education and at the same time deny their black parents equal job opportunities by refusing to enforce the laws against discriminatory hiring.

Sitting back and watching how the wind blew in Florida, the President seized upon the results of that State's busing referendum. Mr. Nixon may win additional support from the racist segment of our population but in the process of gaining these votes, he is taking the Constitution into his own hands to turn the civil rights clock back to 1896. For blacks, the journey on the road to equality has been a long and trying one. Obstructionists such as Mr. Nixon have always attempted to block the road to total equality. But he and his kind cannot turn back the clock, cannot deny blacks

their constitutional rights without endangering the constitutional rights of whites.

Those who drafted the Constitution and the Declaration of Independence foresaw the kinds of hysteria and pandemonia that would exist in days like this. They knew that men who normally are protectors of the Constitution and the rights of individuals would be called upon by ignorant mobs to set aside the rights of individuals and in effect destroy the Constitution.

Thomas Paine so eloquently put it when he said:

These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman.

Seldom in our Nation's history has the need for a reasoned approach to our many social, political and economic problems been more clearly felt. Yet, we permit ourselves to be confused and divided by issues that are magnified and distorted out of all relation to reality.

The matter of school busing to achieve integration is one such issue. Our ability to separate out the real problems from the contrived may well prove a supreme test of our ability to maintain a democratic, pluralist society.

The American Jewish Committee reasserts its unequivocal commitment to an integrated society and to quality public education for all. Integrated public schools offering equal educational opportunity are a necessary component of that society.

We are unalterably opposed to a constitutional amendment against busing or any other executive or legislative technique which would undermine this commitment.

We make no attempt to ignore or minimize the many practical difficulties involved in integrating schools. Many Americans are resisting court-ordered busing because they honestly feel it would jeopardize the quality of their children's education. Many are concerned for their children's safety. Some support has also developed among our racial and ethnic minorities for a retention of separate schools as part of their political and social drives. These real problems have been exploited by cynical politicians who fan hysteria and offer simplistic solutions to complicated social issues.

The current emotional debate over busing loses sight of some of the important facts; first, 18 million schoolchildren—40 percent of the total school population—are normally bused to and from school for reasons that have nothing to do with racial balance; second, in Mississippi, South Carolina, and Alabama there has been a 2- to 3-percent decrease in the number of students bused since 1967-68 in the process of desegregating previously segregated schools. The issue, therefore, is not "massive" or "forced" busing, but rather whether there should be new constitutional, legislative, and executive prohibitions on the use of any busing in desegregation plans that are developed by local communities or directed by courts.

The American Jewish Committee believes that there should be no such prohibitions, and that a variety of school integration approaches must be used to achieve the twin goals of integration and quality education.

We must not permit "the busing issue" to divert us from the complex of economic, social, and political issues crying out for solution in order to improve the quality—and the equality—of life for all Americans.

MEAT PRICES

The SPEAKER pro tempore (Mr. LINK). Under a previous order of the House the gentleman from Iowa (Mr. SMITH) is recognized for 30 minutes.

(Mr. SMITH of Iowa asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. SMITH of Iowa. Mr. Speaker, in yesterday's newspaper appeared two full-page advertisements, one by Giant Food Stores and the other by Safeway Food Stores, both of which alleged to contain information which could help consumers fight inflation.

The Giant Food Store ad reads, in part, as follows:

You have the right to be informed about meat prices. Meat prices are high and from all predictions will remain high. Beef is near the highest level since the end of the Korean war. Why are they so high? It begins at the source: Livestock prices were not and are not now controlled under the present economic program. Less meat is reaching the market. Prices from our suppliers have skyrocketed. Because of all these reasons, you will find higher prices on almost all fresh meats.

We consumers can help bring prices down. Buy less meat. Use other forms of protein.

Then, they list as examples many kinds of fish, both fresh and frozen, as good buys. Dried beans, lentils, cereal grain products, macaroni and spaghetti, and peanut butter too, when combined with animal proteins and other foods, such as dairy products, make a meal of high quality protein.

Then it says:

There are lower-priced, nutritious substitutes for high-priced meat. In addition, Giant has provided some valuable shopping tools that can help you get the most nutrition for your food dollar. Nutrition information is posted for 85 items in all Giant stores. Check the posters to find nutritious alternatives for the more expensive foods.

The unit price, that is the cost per measure, is posted for most items sold in Giant stores. Use unit pricing. It is there to help you. There are ways to beat the high cost of meats.

It is signed by Esther Peterson who takes the title of "Consumer Adviser to the President of Giant Food."

Then the ad on Safeway Stores says, in big, black print:

HELP FIGHT INFLATION AND EAT WELL, TOO!

Under that it says:

There is something you can do to help fight inflation. It's something all of us can do in the fight against higher food prices. Let's use more of the many nutritious foods which are plentiful and lower in price. When you serve one of these, you save money right

now. Also, you help to speed the day when costs will go down on other foods.

We will be telling you in Safeway newspaper ads and through store signs which foods are current "Inflation-Fighters."

Then it lists a number of foods it says one should buy to fight inflation, such as scrapple, bologna, some pancake mix, and some other foods.

Now, Mr. Speaker, my curiosity was raised enough that I went to both a Giant Food Store and a Safeway Food Store, which are across the street from one another near the 3900 block of Minnesota Avenue. After shopping and comparing the prices in those stores I can only conclude that these ads are an outright consumer fraud designed to mislead customers to buy foods which contain less of the needed nutrients per dollar of expenditure. While in almost every instance the comparable food at the Safeway store was cheaper than in the Giant store, the foods Safeway promoted in their ad as "Inflation-Fighters" in fact cost more per protein unit than other available foods including some meats. This is another example of how consumers are being charged more money than necessary in order to pay for advertising which commits a fraud upon them.

The Giant ad states that "Beef is near the highest level since the end of the Korean war," and says that the cause is that "livestock prices were not and are not now controlled." While beef is barely higher than it was 20 years ago, the earnings per share of stock of the Giant Food Corp., which operates in the District of Columbia, Maryland, and the Virginia area, on an adjusted basis, have increased more than 100 percent in the last 4 years, from \$1.13 in 1967 up to \$2.65 for the past 12 months. The earnings per share of stock on Safeway Stores, Inc., for the same period advanced from \$2 up to \$2.91, or 45 percent in just 4 years. Instead of diverting attention toward a product that has barely increased in price in 20 years, it seems one place they could better help fight inflation would be to take less profit and spend less of the consumers' money for advertisements designed to mislead consumers.

The Giant advertisement was centered on the idea that meat prices are too high, but that Giant offers several good protein alternatives such as fish, eggs, cheeses, and various other products mixed with animal protein. Upon checking prices, I found an interesting fact. I broke these products down from a table that is in a handbook published by the Department of Agriculture Research Service which shows the amount of protein in each of the various foods.

For example, it shows that on round steak of choice grade there are 91.6 grams of protein per pound. At the price that was quoted in the store that is 1.6 cents per gram. On the other hand, chuck roast, which was featured as one of these "inflation fighters," was 89 cents a pound, but it only contains 18.7 grams of protein per pound, so that the cost per gram was 4.7 cents.

In fact, the "inflation fighter" chuck roast is three times as much per gram of protein as is the choice round steak.

Also it was noteworthy that big bologna, for example, which contains all

kinds of leftovers and cereals, and some other foreign substances to meat, as binders, is actually as highly priced per protein unit as round steak.

Mr. Speaker, I insert at this point a list of the various foods that I checked.

The material referred to follows:

	Price per pound	Gram of protein per pound	Price per gram of protein, in cents
Round steak (choice grade).....	\$1.49	91.6	1.6
Ground beef.....	.75	81.2	.92
Stewing lamb.....	.39	83.5	.45
Sliced ham.....	.79	90.7	.87
Big bologna.....	.93	60.3	1.52
Chicken legs.....	.75	51.2	1.47
Chicken thighs.....	.69	61.6	1.1
Turkey.....	.57	55.6	1.0
White enriched bread.....	.29	39.5	.73
Chuck roast (choice grade).....	.89	18.7	4.7
Perch fillet (frozen or fresh).....	.79	31.5	2.5
Catfish fillet.....	1.09	79.8	1.36
Carp fish (whole).....	.49	24.5	2.0
Eggs, grade A large per dozen \$0.49 per 24-ounces			
dozen equals.....	.39	52.1	.6
American cheese.....	.89	105.2	.84
Swiss cheese.....	1.26	119.8	1.05
Cottage cheese.....	.33	61.7	.53
Scrapple.....	.43	39.9	1.08
Margarine (corn oil).....	.49	2.7	18.1
Cheese pizza, \$0.79 for 13½-ounces.....	1.00	40.4	2.7
Pizza with sausage, \$0.79 for 13½-ounces.....	1.08	35.4	3.05

In several instances good meat of cheaper cuts that were available were much cheaper, in fact, than some of the so-called inflation fighters.

The Giant ad alleged that cereal grain products combined with meat is cheaper and indeed it should be. However, you will notice in the table I am inserting in the Record that the cereal grain product combined with proteins in the list is pizza.

According to a handbook printed by the U.S. Department of Agriculture Research Service on the composition of foods, the grams of protein per unit figure out in such a way that their pizza is 280 percent as much per protein unit as ham and also 180 percent as much per protein unit as choice grade round steak. It is over 500 percent as much per protein unit as stewing lamb and of course cheaper cuts of meat would be even cheaper than pizza by comparison. So the ad directs attention away from cheaper foods per protein unit.

The Giant ad claims "The unit price, that is the cost per measure, is posted for the items sold in Giant stores." In fact, the only products I saw which told how much protein it contained were dog food and cat food. What good does it do a housewife who is shopping for protein nutrients to know that a certain box contains one pound of some mixture if the protein content of the mixture is not available?

The most important item in most people's diet is proteins. Indeed most people eat too few proteins and too much of the foods which can be stored as fat. The Giant ad was allegedly directed at how to secure a better buy in proteins. Indeed more education is needed on how to shop for protein. However, the Giant ad contained misinformation and if the advice therein were followed would result in customers making the worst buys

in the store in terms of cost per edible protein unit.

Unless a consumer goes to the store armed with a computer and a table showing protein content of each of those foods, they have little chance to know which is the best buy.

When a company increases their margin of profit per share of stock so much that they more than double that profit in 4 years and still have money to buy full page ads to divert the attention of customers from those profits and also mislead them into buying products which cost more per protein unit, it is time for consumers to stand up to those companies which engage in such false advertising techniques with consumers' money and to divert purchases away from such stores as Giant and Safeway to stores which do not use these shoddy practices.

The Giant ad is signed by Esther Petersen who is given the title of "Consumer Advisor." I must conclude that if she advised on this, she was advising Giant how to extract more money for less from consumers.

While prices were cheaper in most every instance at the Safeway store, they too were promoting products which in many instances cost more per protein unit and claiming the higher cost products were "inflation-fighters."

It is surely past time for supermarkets to either use the truth as a prerequisite in advertising or else stop advertising. Perhaps this specific example will help direct consumers' attention toward the need for an analysis on foods and to be wary of claims by consumer advisers whose paycheck comes from the company that makes higher profits from fraudulent advertising.

We also need a consumer protection agency to take effective action in cases like this.

Meanwhile consumers can protest this kind of activity by avoiding the Giant and Safeway and those who engage in such practices.

I hope Mrs. Knauer of the Office of Consumer Affairs will also give it her attention.

Mr. LANDGREBE. Mr. Speaker, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman.

Mr. LANDGREBE. Mr. Speaker, I would like to compliment the gentleman from Iowa on his very close scrutiny of this matter and for bringing this information to the floor of the House of Representatives. I would associate myself with the gentleman's remarks.

Mr. SMITH of Iowa. I thank the gentleman.

Mr. LINK. Mr. Speaker, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman.

Mr. LINK. Mr. Speaker, I commend the gentleman from Iowa for bringing this matter to the attention of the House and the Nation.

Mr. Speaker, the retail cost of a representative market basket of food rose \$21 during 1971 and \$20 of that \$21 went to

middlemen. Only \$1 went to the farmer-producer.

In the past 20 years, farm prices have increased only 7 percent compared to 340 percent for wage earners, 430 percent for Government employees, 200 percent for business and professional people, and 300 percent for receivers of dividends. In the same 20-year period, farm production costs have increased by 50 percent.

The following statistics on live cattle and retail meat prices in a midwestern city in 1952 and 1972 should be noted. In January of 1952, the producer received \$39 per hundredweight for prime cattle and \$35.50 to \$38 for most choice to prime.

Now, 20 years later, on February 16, 1972, the producer received virtually the same price, \$38 for prime and \$34 to \$37 for most choice to prime. Yet, in the same 20-year period, the price to the consumer in the market has virtually doubled.

On January 9, 1952, the consumer paid, 85 cents per pound for Swiss steak; 49 cents for hamburger; 79 cents for rib steak; 79 cents for beef stew; 98 cents for sirloin; 85 cents for round steak; 65 cents for beef roast; and 69 cents for prime rib.

On February 16, 1972, the consumer in the same supermarket paid \$1.69 for Swiss steak; 98 cents to \$1.19 for hamburger; \$1.59 for rib steak; 98 cents for beef stew; \$1.68 for sirloin steak; \$1.38 for round steak; \$1.19 for beef roast; and \$1.29 for prime rib.

Mr. Speaker, these figures speak for themselves. Clearly, the producer should not be made the scapegoat for the rising cost of living.

Mr. SMITH of Iowa, Mr. Speaker, I yield to the gentleman from Montana.

Mr. MELCHER. Mr. Speaker, I want to commend the gentleman from Iowa (Mr. SMITH) for taking this special order to draw the attention of the House to a misleading advertisement concerning the price of meat. It is timely that the public be informed that a full page advertisement by Giant Food chain in this morning's Washington paper is not giving complete and accurate facts to the public on the price of meat available in their stores and other stores throughout the country.

The wholesale price of choice steer beef on June 15, 1970 was \$47.50. Last week, on March 15, the whole sale price was \$54.45—both figures Omaha basis. This reflected a 14-percent increase over a 21-month period.

For the same period—June 15, 1970, pork loins wholesaled at \$58.80, but on March 15 of this year, the wholesale price was \$53.15, or close to 10 percent less. Combining the two wholesale prices on the choice steer beef with its modest increase and the pork loins or pork chops with their modest decrease in price, it is very much apparent that the price increases in red meats since mid-1970 until last week are not the responsibility of the producer. The wholesale price of pork and beef combined are very nearly the same as the combined wholesale price of the two red meats were almost 2 years ago.

The responsibility for the increase in retail prices of red meats which the Giant ad says have skyrocketed is clearly the responsibility of the middlemen and the retailer. It would seem to me that the Giant Food chain executives could well explain to the public that they are not paying the producers of pork and beef any bonuses but are buying these products at very nearly the same combined prices that they purchased them for in mid-1970.

If there are going to be recommendations for fish and seafoods as a substitute for red meats, Giant and other food chains could well start a campaign to protect their consumers by advocating passage of a bill which I have had in Congress for 2 years which would require the inspection of all fish and sea foods for wholesomeness, sanitation, and healthfulness. We do have laws requiring inspection of all meat, poultry, and dairy products but we allow fish and seafood products to go uninspected, leaving the consumers unprotected in sanitation and health requirements.

The consuming public deserves to have complete honesty with presentation of all the facts concerning the price and quantity of the products that they buy in their huge retail food industry.

Mr. SMITH of Iowa. I want to thank the gentleman. I certainly wholeheartedly endorse his comments concerning the need for fish inspection.

I also note in the cable that carp fish, which are usually considered to be the poorest fish to buy, are more than twice as high in protein per unit as ground beef at the Giant store today.

RIGHT-TO-READ PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOGAN) is recognized for 5 minutes.

Mr. HOGAN. Mr. Speaker, I would not have thought it possible, but the Department of Health, Education, and Welfare has stooped to a new low in its dealings with the Prince Georges County public school system.

On January 5, 1972, HEW notified the county school board that it had approved a grant for the national right-to-read program to be administered at the Randolph Village Elementary School in my neighborhood. On January 24, HEW notified the board that it would not fund the program.

It is this sort of cruel game playing by HEW which leads me to question more strongly every day if HEW really has the interests of schoolchildren at heart.

The terrible irony of HEW's most recent "now you see it, now you don't" move is that it penalizes most severely the very students it claims it is most anxious to help—educationally disadvantaged black children.

In its noncompliance action against the Prince Georges County School Board, HEW contended the board had not met desegregation guidelines and cited as an example the predominantly black Randolph Village Elementary School.

HEW claims it initiated the noncompliance action to insure quality education in predominantly black schools—a goal which we all share—and then it turns around and withdraws funds from the very type of program that is so desperately needed to provide quality education in those schools.

It makes no sense whatsoever.

Mr. Speaker, let us all hope that the President's recent firm policy against busing will finally put a halt to the absurd activities of HEW which are playing havoc with our schools.

THE DISTRIBUTIVE EDUCATION AT WILLIAMSVILLE NORTH HIGH SCHOOL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 15 minutes.

Mr. KEMP. Mr. Speaker, believe today's young people are too often judged en masse by the example of the small minority who make headlines. It is sometimes easy to forget that the vast majority of today's youth are hard working individuals deeply concerned about their future and the future of their country.

I am proud to call attention today to an outstanding group of young people in my district the Distributive Education Clubs of America (DECA) at Williamsville North High School, Williamsville, N.Y., under the creative leadership of coordinator Richard Barry. This fast-growing youth organization has effectively been working with business in a cooperative effort to help preserve and promote our free enterprise system. I would like to bring to the attention of my colleagues the following background information concerning DECA which is available thanks to the efforts of my good friend Morry Poummit, chairman of the Board of Colad, Inc., Buffalo, N.Y.

The Distributive Education Clubs of America (DECA), of which the Williamsville Chapter is a part, is a national organization which combines work and study for students interested in merchandising, marketing, management and service operations. DECA brings together the business community and public schools, providing students with a combination of theoretical and practical job training and businessmen with capable, mature, career minded employees.

Before World War II, a survey was taken by an education committee of high school graduates who did not go to college. The survey showed that 35 percent of these students went into the distribution of products. These young people were the future clerks, salesmen, stockboys, cashiers, and other retail store employees.

Often when they applied for a job, the first question asked was "What training and experience do you have?" Not having either, they were generally rejected and had to continue looking for employment.

So the educators got together and created courses in distributive education, which had to do with salesmanship, mer-

chandising, displays, advertising, promotions, et cetera. It was hard to interest students in taking these courses primarily because they were new and teachers were inexperienced. This has all changed, but let me continue with the historical background.

Between 1937 and 1942 schools created distributive education courses. To interest students in these courses, clubs were formed and adopted names like Future Retailers, Future Distributors, Future Merchants, and Distributive Education Clubs.

Statewide meetings were held between 1941 and 1944 because the local chapters grew and felt the need to communicate with each other. By 1945 State conferences and associations were organized and about this time the idea of a national organization was born.

In 1946 the U.S. Office of Education called a meeting of State distributive education supervisors to develop plans for a national organization. The first conference was held in Memphis, Tenn., in 1947. There were 17 charter members including New York State. In 1948 at the second conference in St. Louis, the official name was adopted—DECA. To better understand what the letters mean, they are DE—Distributive Education—DECA—Distributive Education Clubs of America.

The growth and development of DECA has been rapid. Nationally, there are now 4,000 DECA chapters with over 120,000 members. In New York State we have 133 chapters with 3,500 members.

The national organization is supported by leading American business firms. It administers a scholarship program, makes awards to outstanding students and conducts student leadership conferences.

Past growth and plans for the future give every indication that DECA is destined to become one of the leading youth organizations of our time. This growing success of DECA nationally is due in large part to the tireless efforts of local chapters such as the club at Williamsville North High School which has set an example for excellence unmatched nationwide.

Last year at the Distributive Education Clubs of New York 11th Annual Leadership Conference, Williamsville North High School won more prizes than any chapter in the country had ever won and I would like to list these awards at this time:

1. Chapter of the Year.
2. Student of the Year, Boy.
3. Student of the Year, Girl.
4. Job Interview, Boy.
5. Display Judging.
6. Studies in Marketing on Home Furnishings Manual and Footwear Manual.
7. Second Place DECNY Sweetheart.
8. Third Place Job Interview, Girl.
9. Third Place Display Construction.
10. Four Honorable Mentions.

In addition, one of the chapter's members was elected president of New York State and came very close to being national president. The Williamsville North High School DECA coordinator, Richard Barry, has done a tremendous

job and is to be commended for his efforts. His students are presently working on a marketing project that is sponsored by Colad and Buffalo Niagara Sales and Marketing Executives (SME).

I would like to share with my colleagues more detailed information concerning DECA and the accomplishments of the DECA chapter at Williamsville North High School. Therefore, I am proud and pleased to include in the CONGRESSIONAL RECORD at this time an article which appeared in the publication "You and Your Schools" and general information concerning DECA:

COOPERATIVE EDUCATION DISTRIBUTIVE EDUCATION

The Distributive Education program is probably the most widely known and highly publicized part of the whole, in part because of the huge success of DECA, the students' merchandising club. Distributive education is a three-year program, with a student registration of approximately 125 in each of the two high schools, which has as its most important purpose the recognition by each student of his own abilities, the training of each student in the selling of those abilities, and the presentation to each student of the wide range of opportunities available to one of his abilities.

Classes in Distributive Education include those in psychology, selling and marketing, career choosing, and personal inventory. Students as juniors are placed in jobs fitting their interests and abilities on a part-time basis, usually in the afternoon, five days a week or less. These young people take a full academic course in morning modules at their high school, report to a job for as much as four hours a day in the afternoon, and receive on-the-job training there.

Many students take Distributive Education courses who cannot, because of their academic load, take a job. These students can benefit from the realistic look at the business world which these courses offer them, even though they are not able to take advantage of the unique training which is to be had working in business itself.

Graduates of the Distributive Education Course have entered many colleges such as SUNY at Buffalo, Erie County Community College, Alfred University, and schools such as the Fashion Institute of Technology, and Foxmore Institute. Students earn one regents credit for each year of on-the-job training taken under the sponsorship of the Distributive Education Department, as well as regents credits in all their morning courses. Thus, graduates are fully capable of making different choices: that of attending a four-year college, that of attending a technical school full time, that of studying part time and working part time while further developing skills or going into the work which they will know ahead of time they enjoy and are suited to and in which they have good training.

INDUSTRIAL CAREER TRAINING

The goals of the Industrial Career Department, remain those of recognition of abilities, relevant experience, and development of personal skills, and knowledge of career opportunities.

The Industrial Careers section, headed by Robert Bedell, a teacher with 18 years with this District has sections in both high schools, and is a two-year course. Students must be 16 years old to enter the course, and are placed upon entering the course in a suitable industry.

Courses taught include work in learning about industrial opportunities, personal assessment, and work skills. About 35 students are registered in this department, and

all are worked with by Mr. Bedell on a one to one basis. The placement of each student is decided on the basis of his personal likes, his hobbies, his abilities, and his personality. There is constant communication between Mr. Bedell and the employer to check student progress.

In this department students learn things which adults in the working world take for granted, but which students need guidance to react to in a positive manner. For example, young people who have had no experience in applying to industry for a job need facts to properly make out an employment application. Income taxes and the making out of returns is another factual matter taught to students in this program. The importance of work attitudes, including punctuality, proper work clothes, pleasant personality, and attention to direction are all taught and practiced in actual work conditions.

Graduates of this course have, in many cases, been highly successful in their chosen professions. One young man is now teaching automobile body work for General Motors, and flies to classes all over the country. Another is a baker for a large baking department, having come close to being a dropout before he was placed in a position he enjoyed and to which he believed he could contribute skills learned in the Industrial Careers Department.

Another student graduated from the Industrial Careers Department after working while studying as a machinist with a Williamsville industry. He went into the Navy and earned a machinist rating as a result of his training at Williamsville High School. He then returned to Williamsville and to work for his former employer. He is now a machinist, training students from the Industrial Careers Department in that same industry.

SECRETARIAL OFFICE TRAINING

The Secretarial Office Training course, enrolling about 130 students, is on a morning-study, afternoon-office-work schedule. Most of these students are seniors, but a few juniors are judged advanced enough in their secretarial studies to be allowed to work afternoons in offices also. It should be understood that all students who take shorthand, typing, and office practice are not part of the Secretarial Office Practice course, but only those who have advanced well in their secretarial studies and who want the experience of on-the-job training.

Mr. Mauro is in charge of office placement, and he is assisted by two teacher advisors at High School North, Mrs. Therese Ferrara, secretarial teacher and Miss Clare McCabe, office practice teacher and at High School South, Miss Jean Poorten, secretarial, and Miss Lois Blair, office theory. These teachers rate students as to excellence in their studies for Mr. Mauro who then suggests three names of students who are competent to fill the positions, but the employer is to make the final choice. Further, Mr. Mauro believes that each student would have practice which is gained by talking to an employer about a specific job.

These teacher advisors have a personal knowledge of the ability, achievement and personality of these girls, as does Mr. Mauro.

They also help her with any work problems individual to her own job. To receive credit for the work experience, the student must satisfy both the employer and the teacher advisors as to his performance.

In talking of Cooperative Education, which includes, in the Williamsville plan, three departments—Distributive Education, Industrial Careers, and Secretarial Office Practice, it should be understood that all students who take vocational training are not in these programs. In fact, few of the stu-

dents in business or vocational training are taking Cooperative Education courses. Students in Cooperative Ed must be screened for commitment, for academic ability (since they must do academic work in a half day while other students may have a full day for such study), and for cooperativeness. Although students earn a small paycheck each week, the important facet of the Cooperative Education idea is that actual business experience is invaluable training for life itself. Most students see the Cooperative Education experience that way, and find the relevance of the courses taught in school valuable in giving them facts on which to base future career choices, and business experience which is of use in developing attitudes which business will pay money for.

MR. MAURO, DIRECTOR

Coordinator of the Cooperative Education Department, Ralph Mauro has been a member of the Williamsville District staff for 13 years. He became coordinator in 1964, with his principal duties encompassing both department administration and placement work for the Secretarial Office Training Section. This year he is teaching a class in career planning at Williamsville North.

A lifetime Buffalo and Western New York resident, Mr. Mauro graduated from Canisius College, and he received his Masters Degree in Education Marketing from SUNY at Buffalo. He now lives in Elma with his wife Betty and his five children, Peggy, a sophomore in high school; Patty, a student in junior high school; Francis and William in elementary school; and Michael, 4, still at home. The whole Mauro family enjoys water sports and spends as much time as weather allows in swimming and boating.

Mr. Mauro is a believer in the ability of young people to offer individually something worthwhile to their community. He is working with other community residents in Elma to form a Boys Club there. His long range educational goals include (1) working toward early career education in the middle schools—offering courses which would expose students to the world of work, work's dignity and the relationship of each student to the occupational world; (2) expansion of supervised on-the-job training; and (3) insuring that work experience is included as an integral part of each student's program.

COOPERATIVE EDUCATION

Cooperative education is a three-pronged weapon to attack and conquer the evils of unemployment, student apathy, inexperience, and lack of commitment. Called "cooperative" because both the Williamsville high schools and local business and industry cooperate to train local young people, this unusual Williamsville program offers training for life—training in:

1. Selling themselves.
2. Using their capabilities to best advantage.
3. Good work techniques.
4. The specific skills of the kind of job they want.
5. Having a successful employment interview.
6. Making out employment forms and resumes.

To make this program work well and to the best interests of the employers in our area and to place the right type of student in each job, Mr. Ralph Mauro coordinates and is liaison for the 3 areas. Cooperative Education comprises three areas—Distributive, Industrial, and Secretarial. Mr. Richard Barry at North High School and Mr. John McCracken at South High School are Teacher-Advisors for Distributive Education. Mr. Robert Bedell is in charge of Industrial Training division in both schools. Secretarial Office training has Mr. Mauro in charge of placement with the assistance of Mrs. Therese Ferrara at

High School North and Miss Jean Poorten at South.

COOPERATION FROM EMPLOYERS

Much is required of these employers who must not only train the students in their own work systems, but must also cooperate with the school district in assessing each student's abilities and attitudes to the work world, and in paying each student for his work. The employers gain students who stay on the job because of counseling, school credit gained, and learning of the business world in general. In many cases the employer has the opportunity to employ full time a young person whom he has trained when that employee has finished his further schooling or training.

The Cooperative Education Department is labelled a success by the businessmen who have gained useful and well-trained employees, by students who have received invaluable experience and training, and by the community of Williamsville at large which has great numbers of young people more fitted to join the world of business.

COOPERATIVE EDUCATIONAL PHILOSOPHY

The Cooperative Education department of the Williamsville high schools has as its aim to train good dependable and loyal employees. But far more than that, the department works to help students learn the value of their own possible contribution to the world of work and learn the best possible way to make this contribution. That these aims have been met is proved by the hundreds of interested businessmen who year after year hire students from the Cooperative Education department, who sing the praises of the students with whom they have worked and the members of the department who have made this relationship possible. Students of the department have been accepted into colleges all over the country, better fitted to choose their college course, and better fitted to earn part of their college expense. Students of the department have made their way successfully in many phases of business and industry over the years that the department has functioned. Students return to the members of the Cooperative Education department to get further counseling in career choices, to tell members of the department of their successes and triumphs, and to give members of the department further insights into aid which may be given members of the student body not yet out of school.

Because of the one-to-one relationship which this sort of training necessitates, teachers and coordinators of the program know their students well and this individualization makes for increasingly valuable knowledge in training for Cooperative Education.

The exceedingly wide range of career opportunities available to be tested by interested students, from carpenters to interior decorators, from landscape designers to auto mechanics, from accountants to salesmen, widens each year as the employment market changes and as members of the department find that there are more and more demands for their students.

The Cooperative Education department offers courses of interest to all high school students, to those who want a work study program and to those who do not, to those who believe they have a career choice well in mind as well as to those who have no idea what they want to do in the complex business network of the United States. Members of the Cooperative Education department believe in their courses so thoroughly that they recommend at least a few of them for each high school student, and high school students in all ranges of ability who have taken one or more of the courses agree in that assessment.

GENERAL INFORMATION ON DISTRIBUTIVE
EDUCATION CLUBS OF AMERICA

WHAT IS DECA?

The Distributive Education Clubs of America—otherwise known as DECA—is an organization whose program of leadership and personal development is designed specifically for students enrolled in Distributive Education. Distributive Education is a program of instruction which teaches marketing, merchandising and management.

Any student enrolled in any Distributive Education instructional program in the nation is eligible for membership in his local DECA Chapter, his State Association of DECA and National DECA. Each Chapter elects its own student officers and the DE Teacher-Coordinator serves as the Chapter Advisor. All Chapters within a state comprise a State Association of DECA, which is under the leadership of the State DECA Advisor. Each such unit elects student officers as leaders for that particular group. National DECA is composed of State Associations. Student delegates elected by each state in turn elect their own national officers. DECA, Inc., the legal sponsoring unit of this national youth movement, elects a Board of Directors, which is the policy making group of DECA.

DECA is a non-profit, non-political, non-secretarian, youth organization. All Chapters are self-supporting, with members paying local, state and national dues.

DE students have common objectives and interests. Each is studying for a specific career objective in marketing and distribution. Chapter activities have a powerful psychological effect upon the attitudes of students and, for many, DECA is the only opportunity which they have to participate in social activities of the school and to develop knowledge of the responsibilities of citizenship.

DECA Chapters are to DE students what a civic or professional organization is to a group of businessmen. Chapter activities are recognized as a part of the total educational program because of their development of leadership ability, professional attitudes, better citizenship characteristics, and social growth of the individual. DECA Chapter activities are always centered in the school. These Chapter activities serve the teacher-coordinator as a teaching tool by creating interest in all phases of marketing and distribution study.

The DECA Chapter is the showcase for student achievement and progress. Through its activities, students with an interest in marketing and distribution are attracted to the DE program. No set pattern of operation is prescribed for any local Chapter; however, the majority plan activities which include social, civic, professional, and benevolent activities and adopt projects which provide for school and community betterment.

DECA activities provide DECA members an opportunity to serve as leaders and followers, and provides an opportunity for them to receive state and national recognition which they would not have otherwise.

GOALS OF DECA

To assist State Associations in the growth and development of DECA.

To further develop education in marketing and distribution which will contribute to occupational competence.

To promote understanding and appreciation for the responsibilities of citizenship in our free, competitive enterprise system.

ADULT GUIDANCE

National DECA is composed of State Associations of DECA. These State Associations have been duly chartered by the Distributive Education Clubs of America, Inc., upon approval of the Board of Directors.

On the national scale, the governing bodies are both student and adult. Distributive Education Clubs of America, or DECA, refers

to the student area. It is composed of five divisions: High School, Junior Collegiate, Collegiate, Alumni, and Professional. For these five divisions each State Association selects national voting delegates, who, at the National Conference, elect their own National Officers, and conduct the business of that Division.

The adult governing body is DECA, Inc. This is the legal sponsoring agency of DECA and its membership is composed of the head State person responsible for Distributive Education, or his appointed representative in each chartered Association. This group is represented by a Board of Directors, elected by the members of DECA, Inc. The Board of Directors consists of thirteen members including nine persons elected by and from the membership of DECA, Inc., the immediate past President of the Corporation, plus an appointed treasurer, and the Vice President of the Distributive Education Division of the American Vocational Association. Two meetings annually of DECA, Inc., are held at a designated time and place to coincide with the annual American Vocational Association Convention and the annual National Leadership Conference of DECA. The Board of Directors meets as necessary.

DECA—WHAT IT IS—WHAT IT DOES

WHAT IS DE?

Distributive Education identifies a program of instruction which teaches marketing, merchandising and management.

WHAT IS DECA?

DECA identifies the Program of Youth Activity relating to DE—Distributive Education Clubs of America—and is designed to develop future leaders for marketing and distribution.

DECA is the only national youth organization operating within the nation's schools to attract young people to careers in marketing and distribution.

DECA AND THE STUDENT

DE students have common objectives and interests in that each is studying for a specific career objective. DECA activities have a tremendous psychological effect upon the attitudes of students, and many students have no other opportunity to participate in social activities of the school or to develop responsibilities of citizenship.

DECA members learn to serve as leaders and followers, and have opportunity for state and national recognition that they would not have otherwise.

DECA AND THE SCHOOL

DECA Chapter activities are always school-centered, thus contributing to the school's purpose of preparing well-adjusted employable citizens. Chapter activities serve the DE Teacher-Coordinator as a teaching tool by creating interest in all phases of marketing and distribution study, and serve as an avenue of expression for individual talent.

The Chapter is the "show window" for student achievement and progress, and is the public relations arm of the DE instructional program. It attracts students to the DE program who are interested in marketing management and distribution careers and assists in subject matter presentation.

DECA AND THE COMMUNITY

DECA members have made numerous studies and surveys to aid the economic development of their own community. Individual and group marketing projects continue to encourage this type of contribution.

Many businesses favor hiring DE students because of their interest in training and their related school study of that particular business. Many leaders in business and government have praised DECA for its civic-related activities.

DECA AND THE NATION

DE instruction and DECA activity constantly emphasize America's system of competition and private enterprise. Self-help among students is the rule rather than the exception, and DECA leaders give constant encouragement to continued education.

History has proven that whenever a nation's channels of distribution fail to function, that nation is shortlived. As DECA attracts more of our nation's youth to study marketing and distribution, the total DE program becomes a vital necessity to our national security.

NATIONAL DECA MONTH

The purposes of National DECA Month are to call attention to the Distributive Education program, to enhance the educational facilities of your school and to highlight the activities of DECA. DECA Month is held in March each year and should be centered around local and/or statewide DECA activities. Promotional materials are made available to Chapters and State Associations to aid any planned observance.

THE DECA FOUNDATION

The DECA Foundation is a legal body representing the Distributive Education Clubs of America, Inc. Statements within the Articles of Incorporation give DECA the privilege to receive and spend monies for educational purposes. It also gives protection to those who make financial contributions to DECA for these purposes. The DECA Foundation was officially chartered under the laws of the Commonwealth of Virginia on February 2, 1960. DECA's Board of Directors constitutes the membership of The DECA Foundation and establishes policy for its operation. The national Program of Youth Activity is financed by contributions to DECA and is administered under policy established by these Directors.

ADVISORY GROUPS

There are several groups which serve in an advisory capacity to the Board of Directors. One of the most prominent is the National Advisory Board. This group is composed of organizational representatives which contribute financial support to DECA. Regular NAB meetings are held twice each year, normally during the AVA convention and the DECA National Leadership Conference. The NAB is of invaluable assistance to our youth movement.

Other advisory groups include the American Vocational Association, the National Association of Distributive Education Teachers, the Council for Distributive Teacher Education, the National Association of State Supervisors of DE, the National Association of State Directors of Vocational Education, and the U.S. Office of Education.

DECA HEADQUARTERS

National DECA Headquarters houses the employed staff of DECA, Inc. The Executive Director, employed by the Board of Directors, is responsible for the administration of National Headquarters and for executing the policies established by the Board of Directors. His exact duties are described in Article II of the Articles of Incorporation of the Distributive Education Clubs of America, Inc. Other staff members are responsible for the development, promotion, and coordination of many DECA activities between National Headquarters and State Associations.

DECA TERMINOLOGY

DECA, Inc.—legal identity of adult group responsible for the youth program of DECA. Chartered in 1946. Meets twice each year.

DECA—term used in referring to the student organization: local, state or national.

The DECA Foundation—created to assist and encourage DECA members to continue career study in marketing and distribution; serves as a financing arm for DECA.

Board of Directors—elected by members of DECA, Inc., to set policy for DECA, Inc., and The DECA Foundation.

National Advisory Board—representatives from organizations contributing financial support to DECA. Serves in advisory capacity to Directors. Meets as necessary.

Regional Leadership Conferences—leadership meetings held generally in the fall of the year in each of four DECA Regions for the purpose of providing an opportunity for leadership development of State Association Officers and DECA Advisors.

National Leadership Conference—annual climax of year's DECA activity. Purposes: recognize outstanding individual ability and classroom achievement; inspire individual and group leadership. High School Division NLC approved by the National Association of Secondary School Principals.

National Delegates—student representatives elected by State Associations to conduct the official business of the student organization. National officers are elected by and from these delegates.

The DECA Distributor—official publication of DECA, Inc. Circulation 125,000 with readership estimated at two to one. Supplemented by the DECA Dateline.

DECA Headquarters—national offices of DECA; DECA, Inc.; and The DECA Foundation, located at 200 Park Avenue, Falls Church, Virginia 22046.

PUBLICATIONS

The DECA Distributor is the official national magazine of The Distributive Education Clubs of America. Each student member receives a copy of The DECA Distributor through his Chapter Advisor. In addition, the DECA Dateline is sent to each Chapter Advisor for Chapter use. Many other brochures are available at a very nominal charge from National Headquarters.

MEMBERSHIP ITEMS

Beginning in the fall of 1962, a navy blue blazer with the DECA emblem on the left breast pocket was approved as the official identifying uniform of DECA. It is available through Approved Suppliers who meet specifications as may be approved by the Board of Directors of DECA, Inc. In addition, membership pins and other appropriate identification items are available through DECA Approved Suppliers of these items. Each supplier is listed in the Suppliers and Sales Project Guide published annually for Chapter use.

SALES PROJECT GUIDE

At the beginning of the school year each DECA Chapter is provided with a Suppliers & Sales Project Guide to assist Chapters in planning sales project activities for the year. All DECA Approved Sales Project Companies and Suppliers are described in this publication. Chapters may order approved DECA Supplies or products direct, using the appropriate order forms supplied in the Guide.

GROWTH AND DEVELOPMENT

The Chapter Develops

During the period between 1937 and 1942, when cooperative programs in Distributive Education were becoming more widely established, the students in these Distributive Education classes began to form Distributive Education Clubs. This was a spontaneous effort on the part of the students and occurred simultaneously throughout the country. Why did this happen and what need were these clubs filling? Several basic factors were involved.

First, Distributive Education students were employed away from the school campus at their training stations during the afternoon—at a time when many of the other students in their school were involved with the school's extra-curricular activities. The Distributive Education students were, therefore, missing a very important part of school life.

Secondly, these students of Distributive Education had a common interest—their great desire for professional and personal growth.

Thirdly, they felt the need—common to everyone—to belong, to develop socially, and to be a part of the group.

Thus, local Chapters began to spring up all over the country. These early clubs adopted many names—*Future Retailers*, *Future Distributors*, *Distributors*, *Future Merchants*, and *Distributive Education Clubs*.

Between 1941 and 1944, when it became apparent that the strength of local Chapters was growing and when they began to feel the need to communicate with each other, a few States held statewide meetings of Distributive Education Clubs. By 1945, a few states had officially organized State Associations and were holding state conferences. During this time, the idea of a national organization was born.

The National Organization Develops

In 1946, the United States Office of Education invited a represented committee of State Supervisors of Distributive Education to meet in Washington, D.C., with representatives of the USOE, to develop plans for the national organization of Distributive Education Clubs and to prepare a tentative constitution and an organizational chart.

As a result of this preliminary meeting, the national organization was launched and the first Interstate Conference of Distributive Education Clubs was held in Memphis, Tennessee, in April, 1947. At that meeting, delegates from twelve states unanimously adopted a resolution to form a national organization. The organization was officially endorsed by the *National Association of State Directors of Vocational Education*, meeting at the same time in Chicago, Illinois. Officers were elected and committees were appointed to prepare a charter and a constitution for consideration at the next year's conference.

The second National Leadership Conference, held in St. Louis, Missouri, in 1948, saw the adoption of the constitution and the official name, the Distributive Education Clubs of America, designated DECA, and the acceptance of 17 charter member states. They were: Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington.

In order to provide interim leadership, the President of the *National Association of State Supervisors of Distributive Education* appointed a *National Advisory Committee* to serve in lieu of an executive secretary. In 1949 an incorporation meeting, made up of State Supervisors and Advisors of affiliated states, elected the Board of Trustees of the Distributive Education Clubs of America, Inc., to serve as the policy-making body for DECA. DECA was officially chartered under the laws of the Commonwealth of Virginia in 1950.

The development of DECA has been closely followed by many outstanding national, state, and local business organizations, and many have given support assuring the continued growth of DECA.

The *American Vocational Association*, by vote of the House of Delegates, became an official sponsor of the Distributive Education Clubs of America on December 1, 1950.

National Headquarters Develops

In 1951, DECA committees began developing plans for a full-time national organizational structure. Included in these plans were a National Headquarters, *The DECA Foundation*, and other activities designed to promote the welfare of the Chapters, and the State Associations.

In 1953, a National Headquarters was established for DECA and set up at 1010 Vermont Avenue, N.W., in Washington, D.C.,

in space provided by the *American Vocational Association*. At that time the first Executive Secretary of DECA was employed. The first issue of *The Distributor*, the national publication of DECA, was presented just prior to the second annual conference in St. Louis. From 1947 to 1953, the Oklahoma Distributive Education state staff edited and published *The Distributor*.

While the Distributive Education Clubs of America—DECA—is a student organization and is operated by students under an adopted constitution, DECA, Inc., is the legal sponsoring group of the youth movement and is composed of the head State persons responsible for Distributive Education in those states affiliated with DECA, Inc.

The DECA Foundation was established to provide for legal acceptance of gifts, donations and the establishment of funds needed to operate the National Headquarters and the DECA National Program of Youth Activity. Many national, state, and local business organizations have become vitally interested in the DECA movement. Many have given and continue to give financial aid to DECA.

In 1957, donors to *The DECA Foundation* made it possible for DECA to add a Member Service Department to its National Headquarters and to employ a Program Director to head that Department. The annual DECA National Leadership Conference still remains as one of the highlights of the National Program of Youth Activity. A National Officer Training Conference, began in 1957 as an annual function and remains a valuable part of the training of National DECA Officers.

Since 1958, some states have been sending delegations representing junior colleges and other post secondary institutions to the National Leadership Conferences, in an effort to find ways and means to establish DECA Chapters in such institutions. Official recognition was given to this effort in 1961 by a change in the national constitution to allow those states interested to form Post Secondary Divisions. The first National Officer Training Conference for this Division was held in December, 1962, in connection with the *American Vocational Association* convention, meeting in Milwaukee, Wisconsin, at that time. The following year, 1963, the Post Secondary Officer of the High School Division in an effort to more closely coordinate the activities of both Divisions.

In 1960-61 The DECA Scholarship Loan Awards Program was developed and the first scholarship loans were awarded in 1962. This one program has done more than any other DECA activity to help erase the stigma of Distributive Education being a program of terminal education. From 1962 to 1970, approximately 160 scholarship loan awards were given to DECA members.

In 1967, a Public Relations Department was added to the DECA Headquarters, and in 1968 a Publications Department was added, with each Department having its own Director. Both of these Departments have aided greatly in DECA development.

During the 1969 National Leadership Conference in Atlantic City, Alaska became the last state in the Union to be chartered as an affiliated State Association of DECA. Alaskan Delegates received a standing ovation during the chartering ceremony symbolizing a true DECA welcome. Also in 1969 the Board of Directors granted approval to establish four DECA Regional Leadership Conferences as a part of DECA's Program of Youth Activity, to provide additional opportunity for leadership development activities to a greater number of DECA members.

During the 1970 National Leadership Conference in Minneapolis, Voting Delegates of both Divisions of DECA approved a completely revised Constitution. This major revision allowed for the expansion of DECA to five Divisions: High School, Junior Collegiate,

Collegiate, Alumni, and Professional Divisions. Collegiate and Alumni representatives held developmental meetings during the Conference to draft Bylaws for their Divisions and to plan for Divisional development.

Membership in DECA has continually increased each year from 793 members in 1947 to almost 110,000 members in 1970. During each year of its existence, DECA has experienced a substantial membership increase. The number of State Associations affiliated with this national youth movement has increased from twelve in 1947 to 52 in 1970, including the District of Columbia and Puerto Rico.

The growth and development of DECA has been rapid. Many interested educators and business organizations have given their advice, their cooperation, and their support. Past growth and plans for the future give every indication that DECA is destined to become one of the leading youth organizations of our time.

Membership growth

1948	793
1950	5,127
1952	9,200
1954	11,196
1956	12,431
1958	15,235
1960	19,122
1961	22,183
1962	24,939
1963	29,885
1964	36,889
1965	47,359
1966	59,260
1967	72,426
1968	83,783
1969	97,960
1970	108,226

NATIONAL ADVISORY BOARD

History

The National Advisory Board is a group of individuals who represent interests giving financial support to DECA. The Board was created by a joint desire of the DECA Board of Directors and those investing funds in DECA development. DECA, Inc., first approved the appointment of a "National Business Advisory Board" on April 25, 1954, and one meeting of that group was held in New York City in January, 1955, under the direction of George M. Stone (Executive Secretary of DECA, 1953-55). Primary purpose of that meeting was to discuss ways and means of gaining financial support for DECA.

Following that meeting, no other formal meetings of this group were held; however, several of the individuals attending that meeting were most helpful in DECA financial development.

In the spring of 1956, the name of this advisory group was changed to the *National Advisory Board* and the first official meeting of this group was held that fall. Both the name and the purpose of the group have remained unchanged since that time.

Purposes

To serve as a liaison for all financial interests in matters of DECA development.

To serve in an advisory capacity, as requested by the Board of Directors of DECA, Inc.

To lend support to the promotion of DECA.

To assure equal recognition of each contributing interest regardless of the amount contributed.

Operating policies

(Adopted December 6, 1966)

(Revised December 10, 1968)

I. Name

The organization shall be known as the NATIONAL ADVISORY BOARD of the Distributive Education Clubs of America (DECA), and may be referred to as NAB.

II. Purpose and objectives

1. The purpose of this organization shall be to serve in an advisory capacity to the Board of Directors of DECA, Inc.

2. The basic objectives shall be to serve as a liaison for all financial interests in matters of DECA development and to lend support to the promotion of DECA.

III. Membership

1. Any organization contributing Five Hundred Dollars (\$500) or more annually to DECA, Inc., is eligible for membership and to name a representative to serve on the NAB. An organization shall become a member by invitation, and membership shall be in the name of the organization and not the representative.

2. All candidates for membership shall be approved by vote of the Executive Committee.

3. If a representative is unable to continue to serve, it shall be his responsibility to notify his company which should designate his successor.

IV. Officers

1. The officers shall be a Chairman, a Vice Chairman, and a Secretary. All officers shall be elected at the winter meeting of the NAB and shall hold office for the succeeding two years or until duly qualified successors are elected.

2. *Chairman*—The Chairman shall preside at all meetings of the NAB and its Executive Committee. He shall appoint Chairmen of all Standing Committees and other special committees as soon after his election as practicable. He shall be an ex-officio member of all committees except the Nominations Committee. He shall perform all duties incident to his office and shall recommend such action as may be deemed by him likely to increase the usefulness of the NAB. In the event the Chairman, the Vice Chairman, and the Secretary are absent from meetings of the NAB or Executive Committee, the Chairman shall appoint another representative on the NAB to preside.

3. *Vice Chairman*—The Vice Chairman shall oversee the broadening of financial support for DECA, shall arrange to have representatives of new organizations get acquainted with the officers and other members at the semi-annual meetings, and shall assist the Chairman in the performance of his duties at the Chairman shall determine.

4. *Secretary*—The Secretary shall keep a record of the proceedings of all meetings of the NAB, shall send out notices of meetings, and shall prepare other records for NAB as necessary.

V. EXECUTIVE COMMITTEE

1. The Executive Committee shall consist of no more than 16 members of the NAB. These members shall be the Chairman; Vice Chairman; Secretary; Chairmen of the Standing Committees; the immediate past Chairman; and six representatives elected from the membership at large. Members of the Executive Committee may serve simultaneously as an elected member and as an appointed chairman of a Standing Committee, described in Policy VI.

DIAMOND CLUB PROGRAM

Purpose

To provide funds for the Program of Youth Activity conducted by DECA on local, state and national levels in the following areas:

Awards and recognition, leadership conferences, program development.

Leadership training, public information, scholarship loans.

Definition: The Diamond Club Program is a project that allows State Association of DECA to strengthen and expand their program of youth activity for student members of DECA. It also provides an avenue for business, individuals and organization to

financially support a youth program designed for their direct benefit.

The Diamond Club Program is the plan approved by the Distributive Education Clubs of America for self-support of the State Association. The goal of the Diamond Program is to build and sustain a sound financing program for the State Association on a continuing basis.

Need: The need of each State Association to have a sound financing program has been documented repeatedly by surveys. The need for an avenue through which to conduct their own DECA program including the State local, state, and regional businesses can support a given state has also been recognized by the State Association Advisors, Board of Directors of DECA, Inc., and the National Advisory Board. The Diamond Club Program combines in one package an effective plan for solving both of these needs.

Information on any aspect of the Diamond Club Program can be obtained by writing DECA Headquarters.

MEMBERSHIPS

The *Diamond Club Membership* is an exclusive recognition by DECA for those individuals and business interests who are giving maximum support toward student members of DECA in their own state. It entitles the contributor to personal recognition on the Diamond Club membership roster, a personalized membership card, an inscribed membership certificate, a subscription to all state and national publications of DECA, an opportunity to participate in the Diamond Club of your State Association, publicity releases by the State Association in cooperation with the contributor, and other recognitions by the State Association and the Distributive Education Clubs of America as may be appropriate. Cost: \$500 or more.

The *Sustaining Membership* of the Diamond Club Program is a recognition of those individuals and business interests who desire to support the Diamond Club Program of their state to the extent implied. A *Sustaining Membership* entitles the contributor to a personalized membership card, an inscribed membership certificate, and personal recognition by the State Association of DECA as may be appropriate. Cost: \$100 to \$499.

The *Supporting Membership* of the Diamond Club Program is a method of recognizing those individuals and business organizations who may desire to support the Diamond Club Program of their state on a limited basis. A *Supporting Membership* entitles the contributor to a personalized membership card, a membership certificate, and recognition by the State Association of DECA as may be appropriate. Cost: \$10 to \$99.

DESIGNATION AND PROTECTION OF NATURAL AREAS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. BLACKBURN) is recognized for 10 minutes.

Mr. BLACKBURN. Mr. Speaker, on February 17, I had the pleasure of introducing legislation which would grant the Secretary of the Interior the power to develop a program for the designation and protection of natural areas throughout the United States.

Presently, the only program available to the Secretary for the preservation and protection of natural areas is the wilderness system. Unfortunately, land must already be in Federal hands for this act to apply. Though the land and water conservation program does provide a 50-50 matching grant for the development of land and water resources for recrea-

tional purposes, it does not apply to saving natural areas. Thus, the Interior Department does not have authority to grant aid to States and local governments to acquire natural areas of geological or ecological significance. The legislation which I introduced would grant the Secretary of the Interior the power to make 50-50 matching grants for this purpose.

I have found, through my studies, that there is a need for an expanded program to protect natural areas in order to achieve an increased appreciation of the natural history of the United States. Their appropriate use, including environmental education, scientific research, and public appreciation of these areas will be encouraged if they are so protected. Most of us remember our youth in which there were large expanses of natural areas. Unfortunately, with the continuing urban sprawling, these areas are being destroyed and we face the danger that future generations will not have the chance to use nature's wonders as we did.

I realize that in any program of this nature there should be an orderly system and criteria established for designating which areas deserve protection and assistance. Therefore, under title II of my legislation, I establish an Advisory Council on the Preservation of Natural Areas. The members of the Advisory Council shall be the Secretaries of the Interior, Agriculture, Housing and Urban Development; Transportation; Defense; Health, Education, and Welfare; the Smithsonian Institution; the president of the Natural Resources Council; and 10 appointments made by the President of the United States from the public. This Council will advise the President and the Congress on matters relating to the implementation and the coordination of this act with other Federal and State activities. Furthermore, the Council shall establish a national registry of areas which are endangered and will be first to receive funding under this act.

Preservation and protection of our natural areas at this time in our country's history is of prime importance. If we wait too long, there will be little left to protect. I urge prompt consideration of my bill.

EMERGENCY STRIKE LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. BURKE) is recognized for 15 minutes.

Mr. BURKE of Florida. Mr. Speaker, I am pleased to join with my colleagues and give my views on strike legislation intended to provide a more effective means for protecting the public interest against national emergency disputes involving the transportation industries. I cosponsored H.R. 12692, along with 76 of my colleagues.

The action taken by the Subcommittee of the House Interstate and Foreign Commerce Committee on March 1, which killed any possible action on this measure this year, is regrettable.

It is unfortunate that the Members of Congress will not have a chance to vote on this bill this year, and it is manifestly unfair to the American people that they are placed at the mercy of management-labor negotiators who have the power to create massive unemployment, food, fuel, and supply shortages, and even to undermine our entire economy. The recent examples of the British coal miners strike and the British mail strike, presage similar chaos in our own country if the present laws are not changed.

Labor leaders oppose compulsory arbitration and want to continue with voluntary arbitration to arrive at what they call a balance of interests between labor and management. In theory this is free enterprise functioning at its best. But, in reality, labor disputes directly involving the public have three parties; namely, labor, management, and the general public—and the materials of all parties are not represented. To me the public's interests are paramount, and the public is not being represented, nor is its welfare being taken into account in prolonged labor strikes. Since the public doesn't have a voice in the negotiations, the average citizen suffers more than either labor or management.

All fair-minded Americans are in agreement that the workingman should be protected against unscrupulous employment practices, but, by the same token, the average workingman and the American public must also be protected against unscrupulous labor practices. Our present labor laws, regrettably, are outmoded today and put the public at the mercy of the labor bosses who must put on a big show and continually demand higher wages or face the possibility of losing their high position at the next union officers election. Strikes, today, are everybody's business, especially those massive strikes involving large corporations like General Motors, or the recent railroad and dock strikes. Everybody suffers—the employer, the striker, those who work in allied industries whose paychecks are dependent upon the strikers going back to work, and the average citizen who consumes the product or service. It is the consumer in the long run, whether he is a union man, a nonunion man, a worker, or a striker, who ultimately must "pay the freight" because of resulting inflation which brings higher costs and reduces the purchasing power of his hard earned dollar.

Today, in our highly integrated economy, big business and big labor, control such a tremendous amount of our national output, that it is folly to permit such a reckless disregard for the public interest, lest we soon have no nation and no economy with which to deal.

I joined with my colleagues in the Congress in offering a proposal which each of us felt was a viable alternative to compulsory arbitration, but it has been rejected. What we had hoped for was that in cases where a threatened strike or lockout could deprive any section of the Nation of essential transportation services, the President would be authorized to appoint a board of inquiry to study the issues, file a public report and submit to the President recommendations for

settlement of the strike. Further, upon receipt of the report from the board, the Secretary of Labor would initiate one or more of the following:

First, a 30-day back-to-work order;

Second, a call for partial operation of struck facilities;

Third, require both labor and management to submit a list of resolved and unresolved issues and submit their final offers for settlement of the strike;

Fourth, appoint a three-member panel to select the final offer from those submitted if settlement has not been achieved.

Nothing in the bill we offered would change the current operation of the Taft-Hartley law with respect to nationwide strikes, nor the use of the 80-day cooling-off period. The bill applied solely to the railroad, airline, maritime, long-shore and trucking industries.

The effect of such legislation would be that when existing methods for settlement of strikes are exhausted—which could be a lengthy process—an automatic system would set in to end the strike and preserve the public interest. This would replace the present system where all branches of government get into the act—legislative, judicial, and executive—on each and every major strike.

The law has been applied ineffectively to bring trade unions under the judicial structure so that the same rules are applied to them as to all others in society. Over a period of many decades, however, labor unions have been able to establish a position wherein their activities are virtually immune to actions brought in Federal and State courts. As a consequence, nonunion employees and others have been denied adequate legal protection against coercion and violence, and the general public has been denied protection against economic injury. Badly operated unions by themselves cannot destroy the free market economy, but they may nevertheless make it function so badly as to provide its gradual decline, and, either consciously or unconsciously harm all in our society.

The Congress has been forced to act seven times since 1963 to prevent strikes in the railroad industry alone, and still no effective, permanent, mechanism has been set up to settle national emergency disputes. True, there is a paucity of labor laws. Essentially there are five: First, the Clayton Act of 1914 which regulated issuance of injunctions in labor disputes; second, the Railway Labor Act of 1926 which provided the first interventionist policy for the Federal Government; third, the Norris-LaGuardia Act of 1932 which drastically limited jurisdiction of the Federal courts in labor disputes; fourth, the Wagner Act of 1935—the original National Labor Relations Act—which created the National Labor Relations Board and intervened to eliminate employers' resistance to unionization, and fifth, the Taft-Hartley Act which emphasized freedom of choice of employees to join or not to join a union. This lack of regulation is not an accident. Congress has been controlled by a liberal majority for most of the recent past and the labor leaders have always

been affiliated with the liberals. As a direct consequence there are not enough votes in the Congress in my opinion to pass a bill designed to outlaw compulsory unionism or to in any way reform labor unions since the majority of those on the Labor Committees in both the House and Senate are strongly labor oriented.

With H.R. 12692 my colleagues and I tried to find an equitable and effective compromise position which would preserve the right of labor to strike and yet at the same time guard the public's interests. But alas even this was rejected.

Thus it seems we will have to tolerate prolonged and widespread transportation strikes until the public in righteous indignation demands otherwise. Perhaps the passage of time and the continued abuse of power by strike negotiators will finally enrage the electorate sufficiently to force those they send to Congress as their representatives to support legislation which benefits the people of America rather than just a strong special interest group. Until then however we will be compelled to tolerate outrages such as the recent west coast dock strike which lasted a record number of days and affected all U.S. ports including Port Everglades which is in my district and the Port of Miami just south of my district.

Port Everglades is the shipping site for much of the Florida citrus crop that is exported. The dock strike caused serious disruption not only to citrus shipments which had a drastic effect on the entire Florida citrus industry and the pocketbooks of housewives buying oranges but affected other industries too. It jeopardized over 15 years of effort in establishing overseas markets for Florida citrus products and further added to our already unfavorably lopsided balance of payments.

Agriculture products both exports and imports were greatly reduced. The reduced demand for exports caused by the strikes depressed prices to farmers and raised prices in supermarkets.

Farm income was further reduced by the additional cost of diversion to open ports increased storage costs, and spoilage where adequate storage was not available. These lower prices and increased costs were hard for the farmers to bear. How were the farmers and orange growers' interests represented in the west coast dock strike negotiations?

While I favor the right of our working man to better his condition and I am fully in accord with the principle of free collective bargaining, I feel it should be apparent to all that the succession of laws passed by Congress over the past decades and the rulings of the courts have combined to insulate organized labor bosses from due process, in both equity and law. I feel that this power has often been wielded unfairly, and that all Americans, including both management and the working man has suffered because of it. A proper solution to the problems created by labor-management struggles is of critical importance to the

economic and moral health of all the people of our Nation.

THE CLEAN WATER PACKAGE OF AMENDMENTS TO H.R. 11896

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. REUSS) is recognized for 30 minutes.

Mr. REUSS. Mr. Speaker, next week the House will take up the bill called the Federal Water Pollution Control Act Amendments of 1972—H.R. 11896—which was reported out of the Public Works Committee on March 11, 1972—H. Rept. 92-911.

At the outset, let me state that the committee bill contains a number of very fine provisions relating to the construction of municipal waste treatment systems and the conduct of antipollution research and related programs. Many of them are superior to provisions in the strong Senate-passed bill—S. 2770—relating to these same subjects.

The House bill shifts the emphasis away from the water quality standards approach of 1965 which, after nearly 7 years, has met with little success. Water quality standards have been approved only for interstate waters, and then only in 27 of 54 jurisdictions—the 50 States, Puerto Rico, District of Columbia, Virgin Islands, and Guam. Even where approved, many States have unilaterally extended timetables for compliance. Existing Federal law does not even require such standards for intrastate waters, although some States have adopted them. Disputes over the standards, lack of enforcement, and virtually no effluent controls have added to the ineffectiveness of these standards. Moreover, the existing law continues the outmoded theory that our waterways have an unlimited capacity to assimilate wastes.

The House bill, like the Senate bill, wisely transforms the Federal antipollution effort into a program of effluent limitations to control water pollution at the source. Water quality will be a measure of program effectiveness and performance, rather than the sole means of pollution control.

But the Committee bill (H.R. 11896) is far weaker than the Senate bill in the areas of establishing effluent standards and goals after 1976, enforcement, permits to control waste discharges, citizen participation, and worker protection.

In addition, the committee bill would severely limit antipollution enforcement under the Refuse Act of 1899 and emasculate the National Environmental Policy Act of 1969 and the Fish and Wildlife Coordination Act—three laws that are giving the public, for the first time, an opportunity to require the Federal Government and polluters alike to give full consideration to the antipublic effects of their actions on our environment.

Our colleagues—Representatives ABzug and RANGEL—have already detailed for us the weaknesses of H.R. 11896 in their "Additional Views" (H. Rept. 92-

911, p. 393) on the bill. Their views were reprinted in the March 16, 1972, issue of the CONGRESSIONAL RECORD (pages 8805-8813). I need not repeat them here.

When H.R. 11896 is taken up in the House, we will offer the "Clean Water Package of Amendments." That package is already cosponsored by 40 Members of Congress. The amendments will be offered in an effort to strengthen the bill in line with the stronger Senate-passed bill (S. 2770).

The "Clean Water Package of Amendments" will:

Establish that, by 1981, without further action by Congress, polluters must use the best available technology, taking into account the costs thereof, to clean up the wastes they pour into our waterways. Section 304 of the bill, of course, sets forth the following "factors" relating to the assessment of "best available technology": age of equipment and facilities involved, the process employed, the cost and economic, social, and environmental impact of achieving effluent reduction, and foreign competition. Our amendment does not, in any way, affect the "no discharge" goal declared by the House Committee in section 102(a) of the reported bill. With or without our amendments, that declared goal would be a part of the bill;

Provide more national control over the State programs of discharge permits, in order to prevent economic hardship and interstate competition for industries, communities, and workers and to insure that the water quality objectives of the bill are achieved;

Strike from the bill provisions that give polluters who violate this bill or the Refuse Act a total immunity until 1976 from enforcement actions, merely because they file an application for a permit;

Strike from the bill language that would gravely restrict the rights of any person to sue polluters and the Environmental Protection Agency, so as to establish that his rights in water pollution control should be no less than the rights which Congress established for any person in the Clean Air Act and which the House adopted on February 29, 1972, in the noise control bill (H.R. 11021);

Provide criminal sanctions against polluters who willfully violate an EPA order to abate their pollution; and provide adequate worker protection.

The "clean water package of amendments" will also prevent the weakening of the Fish and Wildlife Coordination Act and the National Environmental Policy Act of 1969—NEPA.

The committee states in its report on H.R. 11896 (H. Rept. 92-911) that it did not "intend . . . to decrease or limit the consideration of fish and wildlife" in the administration of the water pollution program (p. 137). But despite this helpful legislative history, the bill amends the Fish and Wildlife Coordination Act. The plain language of the amendment not only limits, but totally eliminates, such "consideration" in the case of future discharges and dredge and fill permits issued under provisions of

the bill. Our amendment will carry out the stated intention of the committee.

The committee, in explaining the NEPA amendment in the bill (H. Rept. 92-911, pp. 137-139), relies entirely on a statement made on the floor of the Senate. We have seen, however, that, since then, a great deal of controversy has arisen in that body and elsewhere over the precise meaning of the NEPA amendment—see National Journal, Feb. 26, 1972, pp. 336-349. Moreover, the House Committee revised the Senate version of this language, causing further uncertainty as to its meaning. The Committee report cites the recent Kalur decision which held that environmental impact statements under NEPA must be filed for Refuse Act permits, and then asserts that if that decision is upheld on appeal, EPA may still be required, despite this amendment, "to prepare" such statements.

We feel certain that the House should not support such a vague and ambiguous amendment, particularly when there is such great uncertainty as to its effect and scope. The House Committee on Merchant Marine and Fisheries, which developed and held hearings on NEPA and has jurisdiction over it, is presently holding hearings on the very problems to which this NEPA amendment in H.R. 11896 is supposedly addressed. The bill being considered by that committee is H.R. 13752. Moreover, that committee will shortly have before it a study by the General Accounting Office on the administration of NEPA. We think that committee, because of its jurisdiction over NEPA, should be given an opportunity to complete the extensive review it has begun and to act on H.R. 13752. Certainly, the deficient piecemeal approach in H.R. 11896 should not be passed by the House while the parent committee is actively trying to work out such problems as may exist in the administration of NEPA.

The "Clean Water Package" is supported by a broad-based group of environmental, civic, labor, farmer, and other groups, including:

Amalgamated Clothing Workers of America.
Bass Anglers Sportsman Society.
Clean Air, Clean Water, Unlimited.
Common Cause.
Environmental Action.
Environmental Policy Center.
Friends of the Earth.
Izaak Walton League of America.
League of Women Voters of the United States.
Minnesota Conservation Foundation.
Minnesota Environmental Control Citizens Association.
Minnesota Public Interest Research Group.
National Consumers League.
National Farmers Union.
National Wildlife Federation.
Northern Environmental Council.
Oil, Chemical, and Atomic Workers International Union.
Save Lake Superior Association.
Sierra Club.
Sport Fishing Institute.
Trout Unlimited.

United Automobile Workers.
United Steelworkers of America.
The Wilderness Society.

The New York Times on March 20, 1972, printed an editorial urging adoption of our "Clean Water Package" of amendments. At this point in the RECORD, I insert the New York Times editorial on H.R. 11896:

[From the New York Times, Mar. 20, 1972]
AND CLEAN WATERS

The water-pollution control bill, which Senator Muskie sponsored and his colleagues long ago approved by a vote of 86 to 0, is even more far-reaching and hence in worse trouble. Between heavy fire from industry and moderate fire from the Administration the Senate bill may be shot down, or existing controls may be seriously weakened in the name of improvement.

Of the changes made by the House Public Works Committee, one of the sharpest setbacks is the drastic modification of the Senate's objective to decrease effluents into the nation's waters for the next thirteen years, by which time (at least this is the goal) they would be eliminated altogether. The House committee, while theoretically retaining the goal, would subject the plan to a study by the National Academy of Sciences, to be followed by a second vote in Congress—by which time a lot of foul water will have flowed under the bridge. Not content to weaken the Senate bill, the committee would also reduce the effectiveness of the EPA by shifting primary responsibility for the issuing of effluent permits to the states, a grave backward step.

Representatives Reuss of Wisconsin and Dingell of Michigan are striving to reverse these stultifying changes with a "clean-water package" of amendments. Unless the efforts of these two outstanding conservationists succeed, there may be no clean water legislation in this Congress at all—a disastrous setback to a cause that cannot afford any delay.

The following Members have joined in urging our colleagues to support these amendments:

LIST OF MEMBERS

Henry S. Reuss, Thomas M. Pelly, John E. Moss, Lucien N. Nedzi, Dante B. Fascell, Floyd V. Hicks, David R. Obey, William D. Ford, Bella S. Azbug, Paul N. McCloskey, Jr., Martha W. Griffiths, Phillip E. Ruppe, James G. O'Hara, Ken Hechler, H. John Heinz, III, Benjamin S. Rosenthal, Robert O. Tiernan, Robert W. Kastenmeier, Dan Rostenkowski, Les Aspin.

John D. Dingell, John P. Saylor, Ray J. Madden, Thaddeus J. Dulski, Gilbert Gude, John H. Dent, Silvio O. Conte, Donald M. Fraser, Jack F. Kemp, Charles C. Diggs, Jr., John Conyers, Jr., Michael Harrington, Thomas M. Rees, F. Bradford Morse, Charles B. Rangel, Charles A. Vanik, Abner J. Mikva, Donald W. Riegle, Jr., John G. Dow, Ogden Reid.

We urge our other colleagues to join us in cosponsoring these amendments.

The clean water package of amendments follows:

I. AMENDMENTS TO TITLE III OF H.R. 11896, AS REPORTED

Re: Requiring use by 1981 of best available technology

1. In section 301(b), on page 267, line 19, strike the words "except as provided in section 315," and

2. In section 315, on page 348, strike the sentence beginning on line 19 and ending on line 2, page 347.

II. AMENDMENT TO TITLE III OF H.R. 11896, AS REPORTED

Re: Criminal sanctions against polluters who willfully violate EPA pollution abatement order

In section 309(c) (1), on page 306, line 25, before the words "any permit" insert the following: "any order issued by the Administrator under subsection (a) of this section, or".

III. AMENDMENTS TO TITLE IV OF H.R. 11896, AS REPORTED

Re: Permits to control the discharge of wastes into the nation's waterways

1. In section 402(a) (5) on page 358, strike all after the period in line 7 through to the end of line 24 inclusive.

2. In section 402(b), on page 359, lines 15 and 16, strike "unless he determines that adequate authority does not exist:" and insert in lieu thereof the following: "if he determines, and publishes his determination, that adequate authority does exist:"

3. In section 402(b), on page 359, lines 18 and 19, strike out "any applicable" and insert in lieu thereof: "all".

4. In section 402(d), on page 362, line 25, insert a comma after the word "Administrator"; and on page 363, line 2, strike "(b) (5) of this section" and insert in lieu thereof the following: "(d) (1) of this section that such State proposes to issue a permit".

5. In section 402(e), on page 363, line 13, after the period insert the following: "No waiver shall be made under this subsection unless regulations have been first promulgated under subsection (f) of this section relating to the category of point sources with respect to which each waiver is proposed".

6. In section 402(1), on page 365, line 1, after "a" insert "valid"; and strike out the sentence beginning on line 5 and ending on line 19.

IV. AMENDMENTS TO TITLE V OF H.R. 11896, AS REPORTED

Re: Citizen suits

1. In section 505(a), on page 377, line 24, and in section 505(b), on page 379, line 5, strike out the word "citizen" and insert the word "person".

2. In section 505(b), on page 379, line 14, strike out the words "issued by the Administrator";

3. In section 505(g), on page 381, strike lines 1 through 6; and in line 7, change "(h)" to "(g)".

V. AMENDMENTS TO TITLE V OF H.R. 11896, AS REPORTED

Re Employee protection

1. Section 507, on page 384, between lines 7 and 8, insert the following:

"(e) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this Act, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge,

lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this Act."

2. In section 509, on page 385, on line 21, after the comma, insert the following: "or carrying out section 507(e) of this Act."

VI. AMENDMENTS TO TITLE V OF H.R. 11896, AS REPORTED

Re: Fish and Wildlife Coordination Act and the National Environmental Policy Act of 1969

1. In section 511(b) on page 389, line 2, strike "and"; and on line 22, change the period to a semi-colon and insert the following: "and (4) the issuance of permits under sections 318, 402, and 404 of this Act."

2. In section 511(d), page 390, strike lines 6 through 16 inclusive.

LOSS OF A COLLEAGUE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. CRANE) is recognized for 5 minutes.

Mr. CRANE. Mr. Speaker, today Republicans lost a colleague with the announcement by the gentleman from New York, Representative OGDEN REID, that he is changing his party affiliation. Often the temptation is felt by some on such an occasion to criticize, to level charges of "turncoat" and disloyalty. I think such criticisms overlook a broader issue.

There are wide-ranging philosophical differences within each of our two major parties. Many have insisted that this is desirable, that the parties to be truly national must be all-embracing and reflect every shade of opinion. I have never subscribed to this concept of political parties.

At the inception of the Republic, the hope and expectation was that the country would never witness the emergence of what James Madison in *Federalist* 10 described as factions, but what we later came to describe as political parties. Ironically enough, it was James Madison himself who was instrumental in developing the first political alternative to the prevailing orthodoxy in the form of a political faction which developed into the first Republican Party which elected Thomas Jefferson in 1800. This was a wholly natural development.

The kind of consensus hoped for by our Founding Fathers represented, perhaps, the one area where they failed properly to understand the nature of man. What they learned in short order is that unanimity is rarely the incident of human councils. Perhaps they knew it all the time and their aversion to faction was simply an expression of hope that we could find a new unanimity to guarantee the survival of the great experiment they had launched.

The Republican Party of Jefferson and Madison was not intended to represent all things to all men. On the contrary, it grew out of the deep conviction entertained by Madison, Jefferson, and others that those who represented the incumbent administration—identified as Federalists at that time—increasingly resurrected the specter of monarchical government. They deliberately chose the word "Republican" to describe their alternative because they were profound believers in republican institutions and saw them as antithetical to oligarchical or monarchical systems. In short they formed an opposition party that rested on the most profound differences that can exist amongst men in their understandings of the role government should play.

At the Constitutional Convention in Philadelphia there was a plan for the Federal Republic circulated amongst the members and authored by Alexander Hamilton. It called for a totally centralized form of government. While Hamilton preferred to use the word "President" to describe the head of that government, the government was so centralized in form that the President would have been a virtual dictator or king. Hamilton went so far as to recommend that Governors of States should not be elected but rather appointed by the President. Clearly, had Hamilton's views prevailed, the system of government created would have more nearly represented the dictatorships we are all too familiar with in the 20th century rather than the one we have. Jefferson, by contrast, believed that government is the servant of the people and the vigor of republican institutions rests upon local autonomy and local responsibility.

Those who today insist upon blurring meaningful distinctions between parties really do a disservice to the purpose of political parties. That purpose is not to guarantee that those on either side of the philosophical spectrum shall always win, but rather that we shall always be guaranteed the right to register meaningful dissent.

The gentleman from New York has obviously made a decision of conscience that was not easy but proper. There is still a residuum of meaningful difference between the Republican Party's approach to problem solving and the Democratic Party's approach to problem solving. My colleague opted in favor of the national party that more nearly reflects his own philosophical convictions.

FULTON URGES CATTLE HIDE EXPORT CONTROLS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. FULTON) is recognized for 5 minutes.

Mr. FULTON. Mr. Speaker, the American shoe industry, the American shoe worker, and the American shoe consumer face a very serious price-cost squeeze which is on the verge of causing very serious economic dislocation and pressure to increase inflation.

What has been taking place and continues at this very moment is that American cattle hides are being exported at increasing rates only to be used for the manufacture of foreign footwear which is then imported back into this country at increasing rates.

According to a statement of March 2 of this year by House Ways and Means Committee Chairman MILLS, the price of American hides has roughly doubled over the past year. This increase in exports has been matched by an increase in shoe imports. In 1960, imports equaled about 5 percent of U.S. domestic production. In the past year, this ratio had grown to almost 50 percent of domestic production and, in the month of January, it was two-thirds.

In the past, in the case of steel and textiles, the American Government has moved to quick action when the ratio of imports to U.S. production reached only 10 percent.

So, in voicing my concern over the problem of cattle hide exports, I join with many other concerned individuals who are talking about real damage to a vital domestic industry. We are not just crying "wolf."

At this point, I would like to quote from a letter on this subject from a representative of one of the Nation's leading footwear producers which was sent to Commerce Secretary Peterson on February 16, 1972:

Obviously, as the price of hides increases, the price of leather we make our shoes from also increases. Since hide costs constitute a good part of the ultimate price to the consumer, we will be forced to raise our prices substantially to cover the cost of these increases. Not only will this help increase the cost of living, but at the same time, we will inevitably lose additional business to our overseas competitors. You are very familiar, I know, with the basic problem we have in the shoe industry—competing against the cheap labor, tax advantages, subsidies and other artificial stimulants that the foreign exporters use. We have certainly felt the effects of this in our business and have been forced to discontinue operations in at least three plants.

Mr. Speaker, this is not an uncommon situation or plight in the American footwear industry today. Help is needed and it is needed immediately.

Some time ago, on February 2, 1972, I wrote the Secretary of Commerce urging immediate export controls on cattle hides. In reply, I was told that the Department was considering the options available for relief. However, since that time, absolutely nothing had been done by the Department of Commerce or our Government to alleviate this situation.

Therefore, today I once again communicated to the Department of Commerce through Secretary Peterson my profound concern over this matter and urged, also once again, that immediate action be taken to apply the necessary export controls.

Unless this action is forthcoming, elementary economics warns that the American footwear industry as we know it may well be doomed in the very near future.

THE ADMINISTRATION OF JOHN BELL WILLIAMS, GOVERNOR OF MISSISSIPPI, 1968-72

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. GRIFFIN) is recognized for 15 minutes.

Mr. GRIFFIN. Mr. Speaker, during the term of any administration few people commend it but many are quick to criticize, some perhaps rightfully so. But at its conclusion the task remains for history to judge, not based upon the manner of man but rather on the deeds and accomplishments of the man and his administration. It is indeed very difficult for us all to look objectively at a recent public record and render a fair judgment, but history does not judge hastily and therefore can remain objective in its assessment. But as it is with the judgment of history, we always find that the deeds and the accomplishments when finally realized and viewed in proper perspective are credited to the one man who made them possible, and rightfully so.

In January of this year the Honorable John Bell Williams completed his term as Governor of the State of Mississippi. I do not attempt here to prejudge history on this administration but do attempt to look at it objectively, not at the man himself but the deeds and accomplishments. And after looking at these deeds and accomplishments I believe we must credit the man, John Bell Williams, with a job well done.

Even in these turbulent times, we in Mississippi were able to find hope—to find direction and to dedicate ourselves to the task that was before us to achieve a great and prosperous future.

Mississippians under the John Bell Williams administration were able to enjoy a tremendous program of improvement for public education. Appropriations for higher education were doubled in an effort to build a university, college, and junior college system where our young people did not have to leave our State to obtain a good education. In the past 4 years four more junior college campuses were opened making a college or vocational education accessible to all citizens.

During the past 4 years, through a successful industrial development program in our State, over 54,000 new jobs were created by new or expanding industries. In a period when other sections of our country were experiencing slowdowns, Mississippi's economy continued to swing upward to new heights.

With the establishment of a coordinator of Federal-State programs in the Governor's office, the Williams administration became Mississippi's first to seek actively Federal funds in various aid and assistance programs to upgrade the quality of life for all Mississippians.

During the Williams administration, there were enacted sales tax reform, income tax reform, the new Drug Control Act, Medicaid, the largest highway construction program in our history, penal reform and many more that will benefit the future of Mississippi.

Few of the programs of the past 4 years that I have mentioned here are

short lived gains or contributions. On the contrary, they go to the very construction of a strong foundation upon which our people can build their homes for a prosperous future and fulfill their hopes and needs for that future. Many years will undoubtedly pass before the full benefit of many of these programs are realized but the passage of years will not dull the memory of the contributions and accomplishments that have been made nor who made them. Rather like a fossil, the years will leave an indelible mark upon the bedrock on which our State is built.

And I believe that when the judgment of history is finally made on the administration of John Bell Williams, without fanfare of politics or polls of public opinion, the deeds and accomplishments will speak for themselves and place it high among the most successful and progressive administrations in the history of Mississippi.

A few days before passing the torch to his successor on January 18, 1972, John Bell Williams addressed the Mississippi Legislature in joint session. I am sure that many who served with Mr. Williams in this body, would be interested in his farewell address. It follows:

FAREWELL ADDRESS

Mr. President, Mr. Speaker, distinguished members of the joint assembly: I speak to you today for the last time as Governor of the State of Mississippi.

As the shadows lengthen in the fading hours of this administration; as the sun sets to rise again in the expectant dawn of a new administration but a week hence, it is well that our reflections on an eventful yesterday become the prologue to an even greater tomorrow.

The last four years have seen periods of great political controversy; yet these were resolved according to the representative system under which we live. Our State has been strengthened thereby.

During these years, our State fell victim to the most extensive and destructive natural disaster ever to strike the Western Hemisphere; yet our people rose to the occasion, overcame adversity, and effected the most speedy and complete recovery ever experienced under comparable circumstances.

These years have known tragedy; they have known triumph. For me, as Chief Executive of this State shouldering the responsibilities imposed upon me by my oath of office, there have been moments of glorious victory and moments of agonizing frustration. These years have brought heartaches and happiness, disappointment and satisfaction. But in the final analysis, the sum total of these emotional experiences is a further enhancement of my indestructible faith in the collective wisdom of our people as expressed through their elected officials; an even stancher conviction that our basic republican form of government is the finest ever conceived in the mind of man for the management of orderly society; and last—and perhaps most important to me—an even more intense feeling of confidence in the innate goodness of our people.

Today, in compliance with the laws of our State, I appear before you to give a report of the state of the government; and, in accordance with custom, to recommend to you for your consideration such programs as, in my opinion, will promote the welfare of the people of Mississippi.

I shall not make suggestions for legislative action in new areas. This, in my opinion, is properly the prerogative and responsibility of the distinguished Mississippian in whom the majority of our people have reposed their

faith and confidence to serve as Governor of our State for the next four years.

However, I think it proper to suggest to you certain courses of action designed to effect the continuation and strengthening of worthwhile programs already before the people of Mississippi.

Some of these programs had their genesis in our administration. Others were a part of the continuing process of government as we in America know it; programs initiated in previous administrations and passed along to us, in turn, for our consideration.

Herein lies much of the vigor—and one of the principal virtues—of our system of government. We maintain a continuity of interest and purpose which allows one administration to build on the successes of those who have served before. Seldom is this affinity violated to the point where sharp cleavages in government policy are discernible.

It is my confident belief that the transition from the outgoing administration to the one incoming will be harmonious and will result in an orderly exchange of powers.

In a few days we will complete what, by any objective standard of evaluation, must be recorded as a productive, progressive, and responsible administration of the governmental affairs of the people of Mississippi.

Although I believe that the true impact of this administration has not yet been felt fully, nor its implication for the future progress of Mississippi as yet adequately understood and appreciated, I am confident that the judgment of history will deem these four years among the most notable in the life of our State and the general welfare of its people.

In the campaigns of 1967, a general consensus prevailed as to our greatest priority needs; those commanding most urgency in their fulfillment. Succinctly, these major needs, on which everyone agreed, were in the areas of educational improvement and highway construction.

In 1968, the first year of the present administration witnessed the enactment of the largest and most comprehensive program of improvements to public education ever achieved by any Administration. That act of responsibility by the elected representatives of our people might well be considered the real break-through in Mississippi education.

Never before had so many of our people and their elected officials been so united in their support of quality education for our children, the most precious of all our resources. Succeeding years brought forth more improvements, and public education enjoyed its greatest era of general support. At the outset of our administration, we determined that we were going to make it a true landmark period in education; to create a standard by which future progress could be judged. The record of the past four years shows that we accomplished that goal.

At the same time we were striving to upgrade the quality of instruction in our public schools, we faced the most trying and difficult circumstances—perhaps the greatest single threat to the existence of public education—that had confronted our people since the dark and shameful days of Reconstruction. In spite of many harsh impositions and provocations, our people and their elected officials exercised remarkable and commendable restraint. There has been little disruption; and through the patience, fortitude and determination of our people, public education in Mississippi survived its most critical period in one hundred years.

Because of interference through Federal courts and the meddling of Federal bureaucracy, public school conditions in many areas of our State were considered to be intolerable by many of our individual citizens and parents. Parents feared—in many cases with full justification—a deterioration of instructional standards within the public school system in certain communities, and sought refuge for

their children in a private school system. These four years have seen a most phenomenal growth in the numbers and quality of private educational facilities, fortunately in most instances without a feeling on the part of our people that public and private education are incompatible or that one must resist the other. We must continue to urge our citizens to accept the existence of public and private education as being complementary rather than competitive. They must accept the fact that both can live side by side without conflict and accomplish the purpose intended for both: the education and enlightenment of a generation of our children.

Means have been sought to provide some form of public support to these private institutions which are serving the public good. In each instance where we sought to assist, Federal courts arbitrarily frustrated our efforts. Even now, I hope that some means can be found by which this segment of secondary education might be given public financial support.

Because of the priority placed by the present administration on quality education; our schools—for the first time—have been able to compete favorably with those of other States in efforts to attract and retain better and more qualified teachers. During the last four years, teachers' salaries were increased by 39%, while at the same time, expenditures per child from State and local sources rose a total of 44%. A reduction in the teacher-pupil ratio—commonly known as a teacher-unit—from 30 to 27 pupils, provided an opportunity for more individual instruction for the child.

Our public junior college system has shown unprecedented growth in this period of time, and now ranks as second to none in the entire Nation. Enrollment in our public junior college system has nearly doubled during this administration. We are now within reach of our ultimate goal of providing a minimum of two years of college to every young Mississippian who is willing to work for it and who will undertake to pursue that education in a responsible manner.

For the first time, divisional status within the Department of Education was conferred upon our junior college system by Act of the Legislature, thus giving due recognition of the importance of this vital and indispensable segment of our educational system.

Four new junior college campuses have been opened in the past four years, and two more will be opened next September. Strong new programs have been established in basic education, occupational training, manpower development and remedial education, and State support for junior colleges has more than doubled during the past four years.

Annual State funding for vocational education—an indispensable element in the future economic development of our State—has almost doubled. Most important, this new emphasis on vocational education has created a new appreciation for vocational technical training among the people of our State. It has created a new image; one which will help guide thousands of our citizens into new fields of employment and create new opportunities for the realization of individual ambitions for happiness, production and prosperity.

This, in part, is the effort we are making to upgrade education—and thus the economic well-being—of all Mississippians.

We have seen also a strengthening of the entire college and university system within the State. The general support for the eight public senior colleges and universities more than doubled during this administration, and capital improvements for these institutions have totalled more than 44 million dollars.

The level of support now enjoyed by our institutions of higher learning is the highest

in their existence; yet, it is but a step toward greater progress that can and must be accomplished in this area of education.

The last four years experienced an alarming trend throughout this country on the part of many college students. Rebellion against authority, disruption of the orderly processes of education, student riots, demonstrations, and violence were the order of the day on a disturbing number of campuses in this country. It is to the everlasting credit of Mississippi's youth that during this period, characterized by uncertainty and turbulence in our colleges, Mississippi students and faculty members—with few exceptions—deported themselves in the best traditions of American citizenship, displaying respect for law and order on our campuses. It is my fervent hope that the nightmare of this era of conflict shall have given way already to an awakening of the responsibilities of citizenship so vital to an orderly society. To those administrators, faculty members and students responsible for keeping these troubles in our State to a minimum, we can but give an expression of profound appreciation.

During the 1969 Extraordinary Session, the Legislature established and funded the Mississippi Authority for Educational Television. On February 1, 1970, Channel 29 in Jackson was activated, and has been in operation continuously since that time. Since that time, enabling legislation has been enacted and funds provided for the completion of a network designed to serve the entire State. I would urge your continued support of educational television as a potentially indispensable aid to our educational efforts.

Perhaps my greatest single disappointment during my four-year term as Governor came when the Senate refused—by the slim margin of two votes—to finance the much needed statewide four-lane highway construction program to which but a few weeks earlier it had given an overwhelming vote of approval. It is paradoxical that those who succeeded in defeating this legislation gained nothing more than a Pyrrhic victory, because in less than two months the oil companies had increased the retail price of gasoline as much as two cents, with none of the increase going to the construction of better highways for Mississippians. Those who took part in frustrating the approval of financing of this initial program must assume the burden of responsibility for delaying for a year and a half the initiation of any major highway construction program in Mississippi; and further, they must hold themselves accountable for the increased costs of bond financing and the higher costs of highway construction caused by this delay.

Because our primary highways had fallen into such a deplorable state that they were impeding our economic development and contributing to one of the highest and most tragic highway casualty rates in the country, it was inevitable that something had to be done. Consequently, having been forced by circumstances to compromise the initial program, it is yet noteworthy that this administration eventually succeeded, in 1969, in enacting what is nonetheless the largest single highway construction and improvement program ever undertaken within the bounds of our State.

The program adopted at the Extraordinary Session of the 1969 Legislature was the first major highway construction and improvement program that had been undertaken since the late 1930s.

Despite the fact that much is said today about the need for a four-lane highway construction program—an emphasis to which I fully subscribe as evidenced by my initial recommendations—this emphasis on four-laning should not obscure from the minds of the Legislature and the public the other important work which has been performed on our highways during this administration.

Under the three hundred million dollar highway program secured in 1969, tremendous improvements have been made on our existing primary and secondary highways. To date, we have committed less than one-third of the initial three hundred million dollar program to the cost of modernizing and improving some 1200 miles of highways, and an additional 600 miles of such improvements have been programmed.

Preliminary engineering and right-of-way acquisition is progressing to begin major four-laning on sections of U.S. Highways 78, 82, 49, 6 and 45. Passing lanes and other safety promoting facilities have been and are being constructed on many routes.

Most of the work on Highway 45 from Corinth to Waynesboro and Highway 84 from Natchez to Waynesboro is under contract, and plans to let the rest of it to construction are in this year's highway program.

In addition, we recently announced application for Federal funds through the Mississippi Division of Appalachian Development which will lead to four-laning of U.S. Highway 78 from Fulton to Tupelo.

We have already programmed nearly 300 additional miles of four-lane highways in Mississippi. This includes the following highways:

78 from the Tennessee line to Holly Springs.

78 from New Albany to Tupelo.

6 from Batesville to Oxford.

82 from Greenville to Winona.

82 from Starkville to Columbus.

49 from Jackson to Yazoo City.

Furthermore, numerous four-lane bypasses have been programmed to expedite the movement of highway traffic around numerous communities which include, among others: Philadelphia, Morton, and Louisville on Highway 15; Meridian and Macon on Highway 45; and Brookhaven on Highway 84.

The enactment of the 1969 Program made possible an acceleration of construction schedules and completion dates for Interstate 55 between Winona and Canton, moving the target date ahead by more than a year. Through the efforts of the Governor's Emergency Council, established following the incident of Hurricane Camille, the completion target date for Interstate 10 from Louisiana to the Alabama line has been moved ahead by two years.

Much more needs to be done in the area of highway construction, if Mississippi is to continue, even, to maintain its present pace of economic acceleration. It is my fervent hope that—at long last—it might become possible to remove the stumbling block of sectionalism from our highway planning. The absence of a modern highway system in North Mississippi, where it is most desperately needed at this point in time, is a severe deterrent to the economy of South Mississippi as well, though it may not be immediately apparent to the jaundiced eye of provincialism. Past experience suggests that too many Mississippians tend to consider the need for highway construction on a regional or local basis rather than to view it in the perspective of a modern statewide network of traffic arteries. There might have been a time in our State when this narrow viewpoint could be justified with some semblance of reason. However, the demands of today's volume of vehicular traffic are such that this viewpoint can no longer be accommodated with any degree of sanity or commonsense. Economic needs, safety requirements, and today's volume of traffic make it absolutely imperative that we continue to embark upon new programs so as to insure a maximum of highway mobility and safety for our people. The program in this administration will not be enough to meet the current needs in this area, not to mention the requirements of the future. This is a challenge which you as members of the next administration are destined to encounter.

Much of the past four years has been plagued with a nationwide business recession, a continuing squeeze on capital available for expansion, and an uneasy foreign situation. Yet, remarkably, the industrial development of Mississippi attained record-breaking heights.

During this period, the years 1968 and 1970 were recorded as the two best years in the State's history insofar as industrial progress is concerned.

From 1968 through 1971, almost 54,000 new jobs for Mississippians were announced by new and expanded industries. We must maintain and even accelerate this pace, for it should be stressed that when we talk about new jobs we must plan ahead for jobs in the next ten years for the young people between 10 and 19 years of age who already are in our educational system.

We have made great progress—and we need to make even greater strides forward. But the fact becomes apparent—when one contemplates the record—that under every administration beginning with the first administration of Governor Hugh White and continuing through the present, the Agricultural and Industrial Board, which administers our statewide industrial development effort, has consistently, year after year, turned in a record of performance scarcely equalled by any other agency in the entire State of Mississippi.

I am confident that this excellent record of professional competence, industry, and devotion to the progress of Mississippi will continue.

Soon after my inauguration, the Office of Coordinator of Federal-State Programs was established within the Governor's Office by Executive Order. Its purpose was to provide assistance to State departments, agencies and institutions in the development of Federal programs so that the people of Mississippi can be assured fair, efficient, and coordinated planning and administration of these programs.

Since the creation of this office, Mississippi has invested slightly in excess of 700 thousand dollars of State funds in programs administered by this office. This investment, in turn, has generated more than 310 million dollars in Federal funds that have been applied to developmental planning and action programs for the improvement of conditions for our people. It was the creation of this office that made possible the establishment of a Division of Comprehensive Health Planning, responsible for the development of plans to utilize with maximum effectiveness the health resources available within our State and to plan for new and expanded health services for our people. Some of these activities include a major State Health Agency Study, an Appalachian Health Care Study in cooperation with the University of Mississippi School of Medicine, and the organization of work which eventually led to the enactment of a fiscally sound and workable program of Medicaid in Mississippi, now providing medical needs for more than 263,000 aged, indigent, disabled and needy citizens of our State.

The Federal-State office was responsible for the establishment of the Law Enforcement Assistance Agency through which millions of dollars have been channeled for the improvement and strengthening of State and local law enforcement agencies. This has been accomplished primarily in the areas of police training and equipment, juvenile delinquency, narcotics and organized crime control and the upgrading of correctional institutions and methods.

The Division of Appalachian Development geographically limited to twenty eligible counties in Northeast Mississippi, has invested more than 20 million dollars in roads, airports, hospitals, schools, colleges, water and sewer systems, and recreational facilities through implementation in Mississippi of the Appalachian Regional Development Act

of 1965. This has proven to be a Federal program which nonetheless takes its direction from the local level and the disposition of those funds is determined without Federal dictation or domination.

The Governor's Highway Safety Program, instituted in 1968, has financed programs of motor vehicle registration and inspection, driver education and licensing, a major helicopter ambulance demonstration project, and has made available to local communities and counties thirty-five ground ambulances. The full potential of this program is yet to be realized; but in its infancy, it has made a noteworthy contribution to the welfare and lives of our people.

Largely through the efforts of the Governor's Highway Safety Program, a workable and acceptable Implied Consent Law was proposed by me and adopted by the Legislature. This was much needed legislation in the interest of protecting lives and property on our public highways, and will go into operation later in the spring. No doubt it will contribute substantially to a reduction in highway accidents, fatalities and injuries.

The Division of Economic Opportunity, the Division of Manpower, the Council on Aging, and the Governor's Committee on Employment of the Handicapped have added to the benefits enjoyed by our people as a result of the establishment of the Office of Federal-State Coordinator.

The Office of Federal-State Programs has played a vital role in the acceleration of progress and the orderly development of our State during the past four years. Because of the proliferation of Federal programs available to the States which properly fall within the purview of this Office, its administrative structure might well need revision. I would suggest that a serious study be conducted into the present operational apparatus, in order that such revisions or reorganizations as might be indicated could be applied in the interest of promoting more efficiency and manageability of these programs. Should these programs be kept under the direction of the Governor's Office, or should they be incorporated in the creation of a new department, it is my feeling that a line of authority should be more clearly defined. It should be remembered that although this program is but four years old; and while only a proportionately small outlay of State funds is required for its operation, it is responsible for the expenditure of hundreds of millions in Federal funds for the development of our State.

Last year, the Legislature enacted for the first time a major drug control Act, recognizing the need to cope with a problem that becomes more intense with each passing day. This Act, while not perfect and definitely in need of further refinements; nevertheless, provides for the first time a means by which our State can meet the problem effectively. As part of the Drug Control Act, the Legislature created a statewide drug enforcement agency, the first of its kind in our State's history. This agency has now been activated and staffed under the direction of Mr. Ken Fairly, a well qualified and aggressive law enforcement administrator. A great portion of its operational funds is provided through the law enforcement assistance agency, and its work is already beginning to be felt—and favorably.

Regrettably, Mississippi does not have appropriate facilities for the rehabilitation of those who have fallen victim to the drug traffic. Recent experiences, all tragic, have shown that commitment of these young victims of the drug traffic to the State Penitentiary as common criminals is not the answer to the problem.

While penal confinement is necessary in the case of professional drug peddlers—human monsters who deserve neither mercy nor quarter—the unwitting youngsters who fall prey to these monsters deserve the help and understanding of society. Most of these

youngsters suffer emotional or psychological problems; otherwise, they would not seek escape from reality through hallucinogens or opiates. Accorded proper treatment by society and given competent professional help, a vast majority of these youngsters can be rehabilitated and returned to society as productive citizens. To this end, I would hope that you might devote serious time and study to a more efficacious approach to this problem than has been followed in the past. Perhaps the answer lies in the establishment of controlled treatment centers to which this type of offender might be committed—hopefully, salvaged. It is possible that other answers are available; in any event, I am confident that a detailed study of this and alternative approaches to the solution of the drug abuse problem is not merely in order, but absolutely imperative at this time.

No chronicle of events or accomplishments during this period would be complete should it fail to emphasize the outstanding work of the Governor's Emergency Council in the successful recovery efforts following Hurricane Camille. Created by Executive Order, this Council was charged with the tremendous responsibility of coordinating, planning, supervising and maintaining surveillance over the rebuilding of the Gulf Coast and South Mississippi; acting as liaison between our local political subdivisions and Federal Disaster and Relief Agencies, and making certain that our beautiful and once prosperous Gulf Coast would reacquire its former eminence with the greatest of dispatch. Their outstandingly successful efforts in accomplishing this end—a goal now surpassed—deserve the commendation of all our people.

The swift and effective response of the Mississippi Legislature in providing a State appropriation of ten million five hundred thousand dollars for the use and benefit of the political subdivisions in the disaster stricken area was an act of the highest responsibility. Nor could I fail to mention, and express appreciation for, the millions of dollars in cash relief and emergency items that poured into South Mississippi in the wake of Hurricane Camille from private sources. Mississippians will never cease to appreciate, nor will we forget these generous outpourings from the hearts of a compassionate people of a great nation.

Taking advantage of the knowledge gained through the experience of Hurricane Camille, the emergency relief and recovery effort that followed the subsequent series of tornadoes that devastated a number of Delta communities has been commended by the Office of Emergency Preparedness as the most swift, efficient, and wholly satisfactory undertaking of such nature in the life of that agency.

The Education and Research Center completed in 1969, the new Carol Gartin Justice Building now under construction, the Walter Sillers State Office Building soon to be dedicated, the Robert E. Lee properties (which include the former hotel now occupied by State agencies, the 301 Building, the Burroughs Building and several large parking areas) acquired by purchase, and the soon-to-be started Mississippi Wildlife Museum will stand long as physical symbols of an era of progress designed to provide greater services to the people of Mississippi.

The establishment at the Mississippi State Penitentiary of first-offenders' camp, pre-release centers for men and women, improvement and modernization of existing housing facilities for inmates, a significant extension of vocational education facilities, aptitude testing of every incoming inmate, the construction of new and expanding inmate recreational facilities, the construction of an employees' recreation center, are but a few of the improvements that have been effected at that institution. These improvements along with the application of modern principles in the science of correction, have contributed to the sharp, and almost unbeliev-

able, reduction in the rate of returns by prisoners following their initial release from custody. This is further enhanced by the fact that, while paying their debt to society, these prisoners are given an opportunity to mold themselves into productive citizens through training and experience gained at the Penitentiary.

This institution, once regarded as nothing more than a "hell-hole" of brutality and human dereliction, is now highly regarded as a model institution of its type by correctional authorities in other parts of America.

Last year, the Legislature enacted a bill that called for additional changes in the physical plant and operation of this institution. This legislation is well intended, and contains some forward-looking innovations. However, I would point out that the bill contains numerous deficiencies that will need correction, as I pointed out to you in the message accompanying my approval of the bill. Further, its implementation is going to be expensive and a burden on the taxpayers of our State. I would suggest that this act be given further study with the view of adding such amendments as might be necessary in the interest of the institution and the tax-paying public.

Tourism is a major industry in our State. While we have witnessed since 1970, the growth of tourism from a 260 million dollar enterprise to one now grossing nearly a half billion dollars, we have yet to scratch the surface of our potential in this area. Our State Park System has added three new State Parks and three historic sites to the facilities which it manages for the recreation and entertainment of our people and our out-of-State tourist guests. Our Mississippi Park System under efficient and aggressive management has contributed substantially to the economy of the State. Much is yet to be done, however, toward the improvement of this system, and cannot be done at the present level of funding for operations and capital improvements. This problem deserves your attention.

The restriction of time precludes further elaboration—even mention or enumeration—of advancements brought about in other agencies in the interest of better government and more services to the people. For this reason, accomplishments of other agencies during this Administration—while no less important in the context of the whole—will have to be delineated elsewhere. Suffice it to say though, that in every category of State government there has been progress and accomplishment, and I invite your scrutiny of these activities.

By reference, I call to your attention for review and further study the recommendations submitted in my message to the last Regular Session having to do with a proposed reorganization of the Executive Branch of our State government. This message was submitted on January 13, 1971, and its text is contained in the journals of both Houses. I hereby renew the suggestion that consideration and study be given to a needed reorganization of these agencies. The Report of the Mississippi Commission on Efficiency and Economy in State Government has previously been made available to each of you for your study. Some of its recommendations, if not all, might well serve as the basis for bringing about desirable reforms in the organizational structure of our State government.

I take great pride in the achievements of the past four years. I take greater pride, even, in the fact that these achievements have been attained without disturbing the fiscal integrity of our State government. Our fiscal posture is one of strength and solidarity. At the close of this Administration—even after providing the services herein mentioned—we will pass to the incoming Administration an unencumbered cash balance in our general fund in excess of \$15 million—a most en-

viable position among the several State of our Union.

In conclusion, permit me to extend congratulations to each of you upon your election and the trust and confidence reposed in you by your constituencies. As a member of the Legislature, you hold one of the most important offices within the gift of our people. It is my prayer that you will be the beneficiaries of God's richest blessings in the years to come, and that He will guide and direct you in all your deliberations as you seek to serve the best interests of your people.

To the Governor-elect, I offer the same congratulations and the same prayer and pledge my help and cooperation to him as he takes the helm of our Ship of State as its pilot to guide it through the uncharted waters for the next four years.

To the people of our great State, I express profound appreciation for the confidence placed in me four years ago, and for having given me the opportunity to serve in the highest and most responsible office in the State.

To the thousands of fine citizens of our State, whose prayers and expressions of sympathetic understanding and approval have given me needed encouragement and inspiration during these four years, I extend my profound gratitude.

To my family and to my staff, I express publicly my appreciation for their loyalty, perseverance, patience and support throughout this trying, but richly rewarding, period in my life.

I would express gratitude to my fellow chief executives throughout the country for the great honors extended to Mississippi through my selection as a member of the Executive Committee of the 50-State National Council of State Governments; for having permitted me to serve as Chairman of the 15-State Appalachian Regional Commission; and for having selected me as Chairman of the 1971, 19-Jurisdiction Southern Governors' Conference. My election by my fellow governors to serve them in these capacities brought great honor to me personally. More importantly, it gave recognition to the fact that Mississippi—despite what may be said by our detractors—still commands a position of highest respect among the sisterhood of States.

This administration has moved the State forward through turbulent waters. It is axiomatic that the winds of progress that fill the sails to move the Ship of State ahead are the same winds that create the waves that make its journey perilous and difficult.

Next week you will have a new Governor. He deserves your support and your prayers. I wish for him, and you, a successful and productive administration.

In the campaign of 1967, I stated to my audiences: "I believe I can make you a good Governor; I know that I can make you an honest Governor."

Now, at the close of my administration, I would paraphrase by saying: "I hope I have made you a good Governor; I know that I have made you an honest Governor."

I take comfort on this day in the knowledge that I have done my best. Whatever mistakes I may have made were those of the head and not of the heart, for I have given dedicated service to Mississippi to the full measure of my strength, my energy, my time and my talent. I have fought consistently and unwaveringly in support of the same principles and philosophies I advocated in my candidacy for this office. I can but express regret that I did not have more to give.

We await the judgment of history.

ADMINISTRATIVE DISCHARGES CAN BE UNFAIR

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, I should like to bring to the attention of this House subjects which are not often raised in legislative forums: Homosexuality in the Armed Forces and the administration of military justice with reference to the absence of due process in many administrative discharge proceedings in the military services.

Currently, there is a matter involving a young man, whose case I am making public at his request, who is charged with allegedly engaging in a homosexual act. Seeking an opportunity to defend himself by requesting a court-martial where he would have his day in court, RMSN Robert A. Martin, Jr., USN, wrote to me on January 19, 1972, stating:

After 1½ years in the Navy, during which I have had a spotless record and high performance marks, the Navy is now trying to give me an undesirable discharge. The charge: "suspected homosexual involvement." That's right, I am accused of being suspected! The Personnel Officer at the US Naval Support Activity Naples (FPO NY 09521), CWO4 Price, who would play the part of the prosecutor against me in an Administrative Discharge Board hearing, himself told me he didn't have any proof against me.

He went on in his letter to say:

As a journalist by profession and training (before enlisting in the Navy I was a reporter for the New York bureau of the Associated Press) I am particularly aware of the consequences of the stigma attached to a less-than-honorable discharge in what remains in its employment practices a conservative profession. . . . If the Captain believes a court martialable offense has occurred, he should bring it to a court-martial rather than use the administrative discharge procedures to punish a person without a proof of wrong-doing.

I believe that RMSN Martin is right in his demand and that an individual should have the right, particularly in situations which could have such grave consequences to one after discharge from the Navy, to a trial to determine whether or not he is in fact guilty as charged. In support of his request for a court-martial so as to enable him to confront his accuser, I sent the following letter to the Department of the Navy:

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 29, 1972.
CONGRESSIONAL LIAISON,
Department of the Navy,
Washington, D.C.

DEAR SIR: I am writing to you concerning RM3 Robert A. Martin, Jr., [redacted], AF South Box 148, FPO New York 09524.

In view of the gravamen of the charges against him and what the effect of a general discharge given for homosexuality will have on his career in the future, I believe justice requires that he be given a court martial, as he has requested, so that he might defend himself against the charges.

It was never intended, in my judgment, to permit discharges under less than honorable conditions as a way of allowing the Navy to avoid proving charges in a serious case. He is aware of the penalties that might flow from a conviction at a court martial which are greater in degree than those from administrative proceedings, and he is willing to take his chances because he believes he is not guilty of the charges.

I would therefore appreciate your giving him the opportunity to defend himself in court and your advising me of the disposition of the matter.

Sincerely,

EDWARD I. KOCH.

In response, the Navy informed me that final action will not be completed in this matter until late April 1972.

At the present time, no decision has been made concerning his request for the court martial. Surely, this is an elementary right—the right to a full hearing with an opportunity to cross-examine one's accuser. Also interested in this matter involving the right to due process is Senator SAM J. ERVIN, JR., chairman of the Senate Subcommittee on Constitutional Rights.

I believe that the time has come for overhauling the legal processes used by the armed services in connection with discharges based on alleged homosexual acts. Prior to receiving the correspondence from RMSN Martin, I had correspondence on this subject with the Department of Defense which I am setting forth:

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 7, 1971.

Secretary MELVIN LAIRD,
Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: I have on occasion received complaints from young men in the Army who have been discharged as the result of their being homosexuals. The discharge which they receive as I understand it is often less than honorable and obviously has a chilling effect upon their personal and professional lives after they leave the service.

I would appreciate your advising me whether the barring of homosexuals in the Armed Forces is by law or by regulation, and if the type of discharge they receive, which often appears to be punitive, is by law or regulation. I would appreciate receiving your comments on this matter and informing me, if the policy is governed by regulation, whether you would consider changing those regulations so as to permit honorable discharges to those discharged for homosexual conduct.

Further, I should like your point of view on the proposal advanced by some that private homosexual conduct off the base should not bar service in the Armed Forces. Prime Minister Pierre Trudeau summed up my feelings when he said "the state has no business in the bedrooms of the nations."

Sincerely,

EDWARD I. KOCH.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., July 20, 1971.

Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: This is in response to your letter of July 7, 1971, regarding Department of Defense policy concerning homosexuals in the Armed Forces.

The enclosed Fact Sheet regarding Department of Defense policy on homosexuals in the Armed Forces is provided for your information. No changes are contemplated regarding this policy.

The policy regarding the type and character of administrative discharge governing the separation of homosexuals from the Armed Forces is contained in Department of Defense Directive 1332.14, "Administrative Discharges," dated December 20, 1965 [Sections VII.G. 6, and 1.2.] A copy is enclosed for your information.

The nature of a discharge issued as a result of being adjudged by court-martial is specifically governed by Federal statute, 10 United States Code 925. This section encompasses all unnatural sexual intercourse between humans or between humans and animals. Some homosexual relations could come

within the provisions of this section. The maximum punishment which may be imposed for a violation of Section 925 is outlined in paragraph 127c, Table of Maximum Punishment, *Manual for Courts-Martial*, *supra* as follows:

By force and without consent: Dishonorable Discharge, confinement at hard labor for 10 years, total forfeiture of all pay and allowances.

With a child under the age of 16 years: Dishonorable Discharge, confinement at hard labor for 20 years, total forfeiture of all pay and allowances.

Other cases: Dishonorable Discharge, confinement at hard labor for 5 years, total forfeiture of all pay and allowances.

The accused may be charged with assault with intent to commit sodomy in violation of 10 United States Code 934. The maximum punishment in violation of Section 934 is a Dishonorable Discharge, confinement at hard labor for 10 years, and total forfeiture of all pay and allowances.

The *Manual for Courts-Martial* is an Executive Order of the President of the United States as prescribed by Section 836, 10 United Code. All branches of the Armed Services are bound by its provisions.

I trust that the information provided will be of assistance to you. Your interest in matters pertaining to the Military Services is appreciated.

Sincerely,

LEO E. BENADE,
Major General, USA, Deputy Assistant
Secretary of Defense.

HOUSE OF REPRESENTATIVES,
Washington, D.C. August 11, 1971.

Secretary MELVIN LAIRD,
Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to you with further reference to the question of homosexuals in the Armed Services, about which I wrote to you on July 7, 1971.

While I do not approve of the Department of Defense's policy to discharge all homosexuals automatically from the military, I would like to direct this letter to change which could be made in current policy regarding the type of discharge given to homosexuals. When referring to a homosexual in this letter, I mean only a consenting adult who has engaged in homosexual acts on his or her own time and not in public.

Apparently, each branch of the service has a certain discretion in deciding how such an individual is to be discharged, and that such persons usually are not given court martials but are discharged administratively. According to existing regulations as set forth in the Department of Defense Directive No. 1332.14, December 20, 1965, a homosexual could be given administratively either an honorable (Unsuitability G-6) or undesirable (Unfitness I-2 or Misconduct J-1) discharge.

With an undesirable discharge, it is my understanding that any veterans' benefits to which an individual might otherwise be entitled can be cut off at the discretion of the administering agency. Furthermore, the discharge papers are marked "under terms other than honorable" accompanied by a code number signifying sexual deviation. This type of discharge is, in effect, a harsh, punitive measure, one that hardly reflects the contemporary and more enlightened attitude of society today towards an individual's sexual preferences.

Not only is present military policy on this matter cruelly out of date, but I believe that what little discretion exists relating to the method of discharging homosexuals is being abused. By way of illustration, I refer you to SECNAV Instruction 1900.9, April 20, 1964, which in my estimation encourages Naval personnel to give undesirable discharges to

any homosexual or suspected homosexual. On the first page of this document, paragraph 4f states:

"When processing an individual by administrative action in accordance with this instruction and when the conditions prompting such action are essentially voluntary participation in aberrant sexual activity, the separation of the individual will normally be characterized as having been 'under conditions other than honorable.' Administrative processing of cases should therefore contemplate such an ultimate disposition."

I cannot see that homosexual behavior in the military is an "offense" which merits this type of discharge. While it is apparent that the leaders of the military, in order to maintain discipline, feel it necessary to exclude homosexuals; there is no need to gratuitously punish them with an undesirable discharge.

Usually these individuals are being punished for a failure to comply with the special dictated of an artificial society which they were forced to join. Many, no doubt, were unaware of their homosexual tendencies before joining the service. Furthermore, the present policy of indicating the reason for discharge as sexual deviation constitutes an invasion of privacy. The military can, of course, keep its own records indicating why an individual was separated, but that information ought not in any way be made public.

What might be argued by some to be the concern of the military in one's personal life while an active military duty certainly ought not to be the concern of others in civilian life.

I would hope that you would give serious attention to this matter and advise me whether or not you would be willing to alter present Department of Defense policy, so that homosexuals, as defined in this letter, are given honorable discharges. Particular attention should be given to issuing new directives to supersede any documents such as SECNAV 1900.9 referred to above.

Sincerely,

EDWARD I. KOCH.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., August 19, 1971.

Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: This is in response to your letter of August 11, 1971, requesting that the Department of Defense alter current discharge policy so that a homosexual would be given an honorable discharge when the consenting adult engages in homosexual acts on his or her own time and not in public.

We cannot agree that Department of Defense policy concerning the discharge of homosexuals, as enumerated in my letter of July 7, 1971, is "cruelly out of date and does not reflect the contemporary and more enlightened attitude of society."

It is noted that in your reference to paragraph 4f, SECNAV Instruction 1900.9 dated April 20, 1964, the following was omitted:

"Whenever a higher character of separation is found to be warranted upon departmental review, such will be effected and command submitting case shall take pains to note all circumstances favorable to the individual which would affect the type of discharge to be awarded."

Accordingly, we do not believe this paragraph, when considering its full meaning and coupled with the total intent of the instruction, encourages the issuance of undesirable discharges to homosexuals.

At the time a person is separated from the military service he is furnished a DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) which reflects the type of discharge, reason and authority. A separation designator number instead of a narrative statement is used to reflect the rea-

son for separation. This is done to afford the individual who receives a less than honorable discharge some protection from stigmatism which could result from words used to describe the reason for his discharge. The release of these separation designator numbers is closely monitored and provided only to governmental agencies indicating a "need to know." Accordingly, this information is not made a matter of public knowledge.

I trust that the information provided will be of assistance to you. Your interest in matters pertaining to the military services is appreciated.

Sincerely,

LEO E. BENADE,
Major General, USA, Deputy Assistant
Secretary of Defense.

HOUSE OF REPRESENTATIVES,
Washington, D.C., January 7, 1972.
Maj. Gen. LEO E. BENADE, USA,
Deputy Assistant Secretary of Defense, De-
partment of Defense, Washington, D.C.

DEAR GENERAL BENADE: I am writing to you with further reference to the question of homosexuals in the Armed Services. I thank you for the response which you sent and which I am enclosing.

I assume from the reference to paragraph 4f, SECNAV Instruction 1900.9, that it is your intent that the Department of Defense whenever possible will provide an honorable separation as opposed to an undesirable discharge to homosexuals. I would appreciate being provided with the number of undesirable discharges issued as the result of homosexual activity each year for the last 5 years, and, if the records are available within that same period, the number of honorable discharges issued to homosexuals.

With respect to the separation designator numbers and your belief that they are not a matter of public knowledge, may I tell you that they indeed are. Employment agencies are well aware of these numbers and as I am sure are many others. What purpose does it serve to place the designator number on the discharge when that information can be kept in the file? In view of that, I would ask you to consider reviewing a change in this area.

Thank you for your interest in this matter.

Sincerely,

EDWARD I. KOCH.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., January 17, 1972.
Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: This is in response to your letter of January 7, 1972, requesting additional information on the matter of homosexuals in the Armed Forces.

The enclosed chart depicts the administrative discharges issued for homosexual tendencies or sexual perversion during fiscal years 1967-1971.

In regard to your comment regarding separation designator numbers (SDN) being public knowledge, it is re-emphasized that the Department of Defense does not make SDNs a matter of public knowledge.

It should be noted that the purpose of DD Form 214 is threefold: (1) provides the recipient with a brief record of a term of net service during his current term of service, (2) provides various Governmental agencies with an authoritative source of information, and (3) provides the military service information for administrative purposes. The form serves a multitude of purposes and the elimination of data such as "reason for separation and authority" would drastically reduce the value and use of the document. For example, the elimination of SDNs from the data element "reason for separation and authority" on the DD Form 214 would cause a lengthy delay by the Veterans' Administration in determining an individual's eligibility for veterans' benefits inasmuch as a time-

consuming search and review would have to be made of the veteran's record which is retired to the appropriate record center of the Service upon his discharge.

While the Department of Defense is committed to a periodic re-examination of policies relating to the preparation of and the inclusion of data on the DD Form 214, no changes are contemplated concerning the elimination of SDNs from the document.

I trust the information provided will be of assistance to you. Your interest in matters pertaining to the Armed Forces is appreciated.

Sincerely,

LEO E. BENADE,
Major General, USA,
Deputy Assistant Secretary of Defense.

DEPARTMENT OF DEFENSE—ADMINISTRATIVE DISCHARGES
HOMOSEXUAL TENDENCIES

	Honorable	General	Total
1967.....	64	414	478
1968.....	230	322	552
1969.....	254	192	446
1970.....	250	182	432
1971.....	204	214	418
Total.....	1,002	1,324	2,326

SEXUAL PERVERSION

	Honorable	General	Undesirable	Total
1967 ¹				
1968.....	117	294	654	1,065
1969.....	140	370	585	1,095
1970.....	119	481	419	1,019
1971.....	93	439	235	767
Total.....	469	1,584	1,894	3,947

¹ Data not available.

HOUSE OF REPRESENTATIVES,
Washington, D.C., January 28, 1972.
Maj. Gen. LEO E. BENADE, USA,
Deputy Assistant Secretary of Defense, De-
partment of Defense, Washington, D.C.

DEAR GENERAL BENADE: Thank you for your letter of January 17th responding to my earlier correspondence concerning homosexuals in the Armed Services.

Because the military's definition of "sexual perversion" includes more than homosexual acts between consenting adults it is impossible for one to interpret how many of those undesirable discharges, listed in your table of administrative discharges, were for homosexual activity between consenting adults. Only a comparison of honorable, general, and undesirable discharges specifically relating to homosexual activity between consenting adults would reflect the military's present policy towards this so-called "offense." If you have such specific figures, I would appreciate receiving them.

It appears from your letters that the Department of Defense has no intention at this time of altering its present policy regarding homosexuals. While I do not want to prolong this correspondence endlessly, I do want to state that in my opinion your reasons for refusing to eliminate SDNs from discharge papers are not persuasive. If and when the Department of Defense conducts a "periodic re-examination of policy, I trust the elimination of SDNs will be approved, for indeed their meaning is public and their effect harmful.

Sincerely,

EDWARD I. KOCH.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., February 4, 1972.
Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: This is in response to your letter of January 28, 1972 regarding homosexuals.

The administrative discharge statistics provided in my letter of January 17, 1972 represents the complete break out of data maintained by this office.

Thank you for your letter.

Sincerely,

LEO E. BENADE,
Major General, USA, Deputy Assistant
Secretary of Defense.

LIGHT ON CRIME

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, my correspondence and discussions with constituents reflect the growing concern with the menace of street crime. I have attempted to make practical proposals to deter what has become an intolerable situation in New York City. My blow the whistle on crime campaign and my bill to relieve our local police of the responsibility to guard foreign missions are two of these recommendations with which you are perhaps familiar.

Today I am introducing a bill, H.R. 14022, to establish a Federal light on crime program. This legislation would mandate the expenditure of \$30 million in each of the next 3 years specifically for the purchase and installation of high-pressure sodium-type lights. The funds would come in grants made directly to local governments on a 75-percent Federal, 25-percent local share basis.

High-pressure sodium lights are able to illuminate a city street far better than our traditional street lighting. They, in a sense, turn night into day and their effectiveness as a deterrent against crime is undeniable.

In Washington, D.C., after installation of high-level lighting in high-crime areas, crime decreased by 31 percent.

Gary, Ind., installed 5,000 new street lights. Criminal assaults dropped 70 percent and robberies 60 percent.

In Chattanooga, Tenn., crime in a 12 block area dropped 70 percent after lighting.

This program I am proposing involves relatively low costs, and can have an immediate impact on reducing street crime. This is a program designed to light our streets for people rather than just for cars; it is a program designed to return the streets to the people.

New York City and other localities have initiated their own, high level lighting plans on a limited scale, combining private and local government funding. Some such light illuminates parts of our own East Side even now. But in a time of budgetary crisis in local government, it is clear that the Federal Government should provide funding for high intensity lighting.

An infusion of Federal funds would allow the type of massive lighting program which I believe we need in our urban areas, and which localities can never finance alone. Rather than having only individual blocks sporadically lighted, Federal funding could conceivably insure that whole communities would be illuminated, to the benefit of residents and merchants alike.

I hope that the Congress will give prompt consideration to H.R. 14022. We

must do what we can to move the country to the date when we can all "see the light" and end the terror in our streets.

MARIHUANA: A SIGNAL OF MISUNDERSTANDING

(Mr. KOCH asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, today the National Commission on Marihuana and Drug Abuse issued its report on the use of marihuana in this country. Entitled, "Marihuana: A Signal of Misunderstanding," the report recommends that possession of marihuana for personal use no longer be an offense. The Commission would also eliminate the sanctions against casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration, not involving profit.

As the one who introduced the original legislation establishing the Commission, I am pleased with the report that has been issued. The Commission has been judicious in its weighing of the evidence and considerations surrounding marihuana use and reasonable in the recommendations it has made. These recommendations go a long way in placing marihuana in proper perspective.

I plan to offer legislation in the House to implement the report's basic recommendations for the Federal decriminalization of marihuana.

If implemented, the Commission's recommendations will help to change the present legal framework and remove penalties that almost everyone concedes are not justified and not effective in deterring usage. The harsh and unrealistic treatment given marihuana users under Federal, and particularly State laws, has undermined the credibility of the Government's policies vis-a-vis the hard drugs, and has distracted our law enforcement efforts from the serious drug abuse problems facing us today.

It is important that the Congress and the States act to correct the criminal code relating to marihuana which indeed is a result of a "misunderstanding" about the substance we are dealing with. We must be sure that this Presidential Commission's report is acted on and not left to become moribund like so many of its predecessors.

Mr. Speaker, I would like to submit for printing in the Record the summary of the 184 page report provided by the National Commission on Marihuana and Drug Abuse. It follows:

NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, Washington, D.C., March 22, 1972.

The National Commission on Marihuana and Drug Abuse unanimously recommended today a policy of discouragement for marihuana use. While rejecting legalization of the drug itself, as in the case of alcohol, the Commission declared that an effective discouragement policy does not require making private possession of marihuana a crime nor does it recommend putting its users in jail.

In its Report, *Marihuana: A Signal of Misunderstanding*, which was submitted to President Nixon at the White House and to the Congress, the Commission recommended

that possession for personal use in private and casual not-for-profit sales in private not be made criminal offenses.

However, the Commission recommended the retention of heavy penalties for cultivation, trafficking, and possession with intent to sell. Use in public would be a criminal offense and the drug, if found in public, would be contraband and subject to seizure. (A list of all recommendations is attached to this information sheet.)

In making the presentation, Raymond P. Shafer, former Governor of Pennsylvania and Chairman of the 13-member Commission appointed by President Nixon (see attached list), said "The Commission exercised judicious restraint in making its recommendations. We unanimously agree that marihuana use is not a desirable behavior, and we agree that society should discourage use. Nevertheless, we feel that, placed in proper perspective with other societal problems, citizens should not be criminalized or jailed merely for private possession or use."

Marihuana: A Signal of Misunderstanding is based on an intensive fact-finding effort which began shortly after funds became available March 22, 1971. The investigation included more than 50 commissioned projects, public and student hearings, and surveys of the general public, law enforcement and medical communities.

Governor Shafer emphasized that "We have attempted to tell the American people the truth about marihuana. In our Report, we have tried to separate fact from fiction and to clear up the many misunderstandings surrounding the marihuana controversy."

The following are some of the major findings presented in the Report:

WHO USES DRUG

At least 24 million Americans 12-years-old and over have used marihuana at least once, and at least 8.3 million are current users.

More than 40% of college and graduate students have tried the drug.

Of those persons who have ever used marihuana, 41% of the adults (18 and older) and 45% of the youth (12-17) no longer use it.

The great majority of marihuana users use the drug less than once a week, probably on weekends, or at a party.

Two percent (500,000) of "ever-users" can be classified as heavy users and use the drug more than once a day.

THE EFFECTS OF MARIHUANA

There is no evidence that experimental or intermittent use of marihuana causes physical or psychological harm. The risk lies instead in the heavy, long-term use of the drug, particularly of the most potent preparations.

Marihuana does not lead to physical dependency. No tortuous withdrawal symptoms follow the sudden cessation of chronic, heavy use. Some evidence indicates that heavy, long-term users may develop a psychological dependence on the drug.

The immediate effects of marihuana intoxication on the individual's organs or bodily functions are transient and have little or no permanent effect. However, there is a definite loss of some psychomotor control and a temporary impairment of time and space perceptions.

No brain damage has been documented relating to marihuana use, in contrast with the well-established brain damage of chronic alcoholism.

A careful search of literature and testimony by health officials has not revealed a single human fatality in the United States proven to have resulted solely from use of marihuana.

Tests on monkeys have demonstrated that the dose required for "overdose death" is enormous and for all practical purposes unachievable by humans smoking marihuana.

No reliable evidence exists indicating that marihuana causes genetic defects in man; however, since fetal damage cannot be ruled

out, the use of marihuana is not advisable during pregnancy.

The incidence of psychosis from marihuana use is exceedingly rare, and such reactions tend to occur in predisposed individuals.

MARIHUANA AND PUBLIC SAFETY

The evidence indicates that marihuana does not cause violent or aggressive behavior or crime.

Recent research has not proven that marihuana use significantly impairs driving ability; however, reliable research has not yet been conducted and the Commission strongly suspects that the acute effects of marihuana use (such as spatial and time distortion and slowed reflexes) may impair driving. The Commission believes that driving while under the influence of any intoxicant is a serious risk to public safety.

MARIHUANA AND PUBLIC WELFARE

From what is now known about the effects of marihuana, its present level of use in American society does not constitute a major threat to public health; the high-risk group constitutes the 2% of American "ever-users" who use the drug heavily and pose a concern for public health officials.

The Commission emphasizes the need for increased research into long-term psychological effects, especially with regard to effects on motivation.

Although some segments of society fear that marihuana use leads to idleness and "dropping out," little likelihood exists that the introduction of a single element such as marihuana use would significantly change the basic personality of any person; rather, an individual is more likely to drop out when circumstances join to produce pressures which he cannot handle effectively.

MARIHUANA AND OTHER DRUGS

Recognizing that one of the most controversial issues in the study of marihuana is its relationship to other drugs, the Commission explored in depth the hypothesis that marihuana use leads to the use of other drugs.

The overwhelming majority of marihuana users do not progress to other drugs, although statistically marihuana users are more likely to experiment with other drugs than are non-users.

Marihuana use does not dictate whether or which other drugs will be used.

As stated by Governor Shafer, "If any one reason can characterize why people in the United States escalate their drug use and become multidrug users, it is peer pressure."

ENFORCEMENT OF THE MARIHUANA LAWS

The Commission was directed by Congress to evaluate the existing federal and state laws relating to marihuana. The vast majority of arrests occur at the state level (at least 200,000) as opposed to the federal level (approximately 4,000). In a study of enforcement in six metropolitan jurisdictions in different states, the Commission found:

93% of the arrests in the sample were for possession.

69% of the arrests were preceded by no investigation, occurring in vehicles or on the street.

Arrests were concentrated among the young (88% were 25 or under); typically the arrestee was a white male, in school or employed in a blue collar job, without a prior record.

Two-thirds of the arrestees were arrested for possession of an ounce of marihuana or less.

Offenders were generally (67%) arrested in groups of two or more persons.

The Commission pointed out that the criminal justice system often responded to this unusual group of "criminals" in a lenient way:

At least 48% of the adult cases and 70% of the juvenile cases were dismissed by the police, the prosecution or the judiciary.

One-third of the arrestees were convicted and sentenced.

Of those convicted of possession, 24% were incarcerated, usually for a year or less.

The Commission concluded that the law enforcement community has adopted a policy of "containment." "Although effort is sometimes expended to seek out private marihuana use," the Report states, "the trend is undoubtedly to invoke the marihuana possession laws only when the behavior (possession) comes out in the open." Governor Shafer added: "The overriding feature of the present marihuana laws is the threat of arrest for indiscretion."

After considering the effects and social impact of marihuana use, the Commission considered four alternative social control policies for the drug: (1) Approval; (2) Elimination; (3) Neutrality; and (4) Discouragement.

The Commission emphasized that society should not approve or encourage the recreational use of any drug. On the other hand, the Commission concluded that elimination of marihuana and its use is unachievable, and the drugs' relative potential for harm to individuals and society does not justify a social policy designed to seek out and firmly punish those who use it.

The most difficult question, the Commission explained, was whether society should try to dissuade its members from using marihuana or should defer entirely to individual judgment, remaining neutral. After lengthy consideration of this issue, the Commission chose to recommend to the public and its policy-makers a social control policy seeking to discourage marihuana use, while concentrating primarily on the prevention of heavy and very heavy use.

The Commission's next step was to consider three legal responses as a means of implementing the discouragement policy: (1) total prohibition; (2) partial prohibition; and (3) regulation.

The Commission explained that the total prohibition scheme now in effect prohibits all marihuana-related behavior, including possession for personal use. Partial prohibition would prohibit cultivation and distribution of the drug but would not prohibit private consumption or acts related to consumption. The distinct feature of a regulation scheme (legalization) is that distribution of the drug is legal.

The Commission, rejecting both the present system and the regulatory scheme, was of the unanimous opinion that marihuana use is not a sufficiently grave problem to subject its users to criminal procedures, but that legalization was inadvisable for a drug which does alter short-term perception, which has uncertain long-term effects and which may be of transient social interest.

Instead, the Commission recommended a partial prohibition scheme which symbolizes a continuing societal disapproval of use, yet removes the criminal stigma and threat of incarceration for users, and also maximizes the flexibility of future public responses as new information comes to light.

The major features of the recommended scheme are that:

Production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially;

Marihuana would be contraband subject to confiscation in public places;

Criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the state level, fines would be imposed for use in public;

In order to keep use private, possession of more than one ounce in public would be prohibited;

In addition, casual, not-for-profit transfers of small amounts, permitted in private, would be prohibited in public.

Specific recommendations for federal and state law are attached).

Five of the 13 Commissioners differed in minor respects regarding the recommendations. Commissioners Rogers, Carter and Ware agree with the discouragement policy and the decriminalization aspects of the recommendations but would recommend, in addition, a civil fine for possession of any amount of marihuana and would limit casual transfers only to those instances where there is no remuneration at all. Commissioners Hughes and Javits believe that marihuana should not be contraband, that all not-for-profit sales should be excluded from the criminal sanction, and that the "ounce or less" requirement for possession in public should be removed.

"A most important question," said Governor Shafer in explaining the Commission's position, "and one which it is still too early to answer, is whether the use of marihuana is fad or fashion. It is possible that the widespread use of marihuana could well disappear of its own accord."

In the Commission's opinion, the proposed partial prohibition scheme would permit the law enforcement community to concentrate on what it is best able to do, reduce trafficking and supply of the drug. At the same time, the Commission believes that responsibility for discouraging consumption should rest with non-legal institutions, such as family, schools, church, and the medical profession.

In anticipation of the Commission's responsibility to present a report on all drugs in 1973, Governor Shafer said.

"From the many surveys and research studies, and from our formal and informal hearings and deliberations, it is evident that the phenomenon of drug abuse in our country poses a very serious threat to our society which will require a massive and sustained effort in drug education and in the revision of our laws to make them uniform, appropriate, effective, and humane. However, such responses are in effect only medications that will help to contain the social illness of drug abuse. The causes of drug abuse must be identified more precisely and must be attended to by the cooperative efforts of all institutions of our society. We will not be able to deal effectively with the problem of drug abuse until we find answers to the larger problem of the diminishing concern among some of our citizens for such matters as long-range personal objectives, self-discipline and the sense of public obligation."

I. Federal

a. Possession of marihuana for personal use would no longer be an offense, but marihuana possessed in public would remain contraband subject to summary seizure and forfeiture.

b. Casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit would no longer be an offense.

c. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence, nor shall proof of such intoxication constitute a negation of specific intent.

II. State

a. Cultivation, sale or distribution for profit and possession with intent to sell would remain felonies (although we do recommend uniform penalties).

b. Possession in private of marihuana for personal use would no longer be an offense.

c. Distribution in private of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would no longer be an offense.

d. Possession in public of one ounce or under of marihuana would not be an offense, but the marihuana would be contraband subject to summary seizure and forfeiture.

e. Possession in public of more than one

ounce of marihuana would be a criminal offense punishable by a fine of \$100.

f. Distribution in public of small amounts of marihuana for no remuneration or insignificant remuneration not involving a profit would be a criminal offense punishable by a fine of \$100.

RECOMMENDATIONS*

* The 13 Commissioners are in basic agreement with the Report and its recommendations. However, several Commissioners diverge with specific recommendations and their opinions are presented in a footnote on pages 151-165. A brief summary of this footnote follows:

Commissioners Rogers and Carter agree with the discouragement policy and the decriminalization aspects of the recommendations, but feel that the contraband concept is not a sufficiently strong expression of societal disapproval of the use of marihuana. They would recommend, in addition, a civil fine for possession of any amount of marihuana in private or in public. This civil fine would not be reflected in a police record.

Commissioner Ware agrees completely with the statements of Commissioners Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. He advocates some penalty short of criminalizing the users, such as a civil fine or some type of extensive drug education. Further, he is opposed to the use of any drug, including alcohol, for the express purpose of becoming intoxicated.

Commissioners Hughes and Javits, while agreeing with the Commission's recommendation that the private use of marihuana be taken out of the criminal justice system, disagree with three specific recommendations relating to the implementation of the discouragement policy.

First, they would eliminate the contraband provision from the partial prohibition scheme adopted by the Commission. Second, believing the Commission has not set forth a clear standard as to what constitutes the casual not-for-profit sale, they recommend that all not-for-profit sales be excluded from criminal sanction. Third, they feel there is no need to retain criminal sanction on public possession of more than one ounce of marihuana and would permit public possession of "some reasonable amount" for personal use.

g. Public use of marihuana would be a criminal offense punishable by a fine of \$100.

h. Disorderly conduct associated with public use of or intoxication by marihuana would be a misdemeanor punishable by up to 60 days in jail, a fine of \$100, or both.

i. Operating a vehicle or dangerous instrument while under the influence of marihuana would be a misdemeanor punishable by up to one year in jail, a fine of up to \$1,000, or both, and suspension of a permit to operate such a vehicle or instrument for up to 180 days.

j. A plea of marihuana intoxication shall not be a defense to any criminal act committed under its influence nor shall proof of such intoxication constitute a negation of specific intent.

k. A person would be absolutely liable in civil court for any damage to person or property which he caused while under the influence of the drug.

ANCILLARY RECOMMENDATIONS

In addition to these legal recommendations for federal and state action, the Commission believes certain other ancillary recommendations should be presented for action.

Legal and law enforcement recommendations

I. Federal

a. Federal law enforcement agencies, especially the Bureau of Narcotics and Danger-

ous Drugs and the Bureau of Customs, should improve their statistical reporting systems so that policies may be planned and resources allocated on the basis of accurate and comprehensive information.

b. The Federal Bureau of Narcotics and Dangerous Drugs should increase its training programs of state and local police with special emphasis on the training in the detection of trafficking cases.

c. Increased border surveillance, a tightening of border procedures, and a realistic eradication program to diminish the supply of drugs coming into the country, coupled with a more effective program for diminishing the domestic production and distribution of marihuana, are required.

II. State

a. All states should adopt the Uniform Controlled Substances Act to achieve uniformity with regard to marihuana and other drug laws, with the exception that the legal response to possession for one's own use be uniformly adopted in accordance with our recommendation in Chapter V of this report.

b. Each state should establish a centralized compulsory reporting and record-keeping authority so that adequate and accurate statistics of arrests, sentences and convictions on a statewide basis are available.

c. Those states requiring physicians to report drug users seeking medical assistance should change such requirements to insure the confidentiality of the drug user's identity, so that persons needing medical help will feel free to seek it.

III. International

If the United States should become a signatory of the proposed Psychotropic Convention, we recommend that cannabis be removed from the existing Single Convention and consideration be given to listing it in the proposed Psychotropic Convention among drugs which have similar effects.

Medical recommendations

1. Fuller coordination of the marihuana research conducted by governmental and private agencies is needed to reduce the duplication of effort, assure a diversity of new approaches and new objectives, and to provide efficient integration of findings into the available body of knowledge.

2. Research efforts to develop an inexpensive, easy method for detecting and quantifying the presence of marihuana in the blood, breath or urine of a person suspected of being intoxicated should be accelerated.

3. An accelerated program for funding foreign research should be undertaken immediately.

4. Increased support of studies which evaluate the efficacy of marihuana in the treatment of physical impairments and disease is recommended.

5. Community-based treatment facilities should be promoted in caring for problem drug users utilizing existing health centers when possible and appropriate.

6. Public health courses on the social aspects of drug use should be included in the curricula of the schools of the health professions.

Other recommendations

1. The Commission recognizes that several state legislatures have improperly classified marihuana as a narcotic, and recommends that they now redefine marihuana according to the standards of the recently adopted Uniform Controlled Substances Law.

2. A single federal agency source should disseminate information and materials relating to marihuana and other drugs. The National Clearinghouse for Drug Abuse Information should be charged with this responsibility.

3. The Special Action Office for Drug Abuse Prevention in the White House should be responsible for the coordination, development and content review of all federally

supported drug educational materials and should issue a report as soon as possible, evaluating existing drug education materials.

4. The Commission notes the significant role played by the voluntary sector of the American community in influencing the social, religious and moral attitudes of our nation's citizens and recommends that the voluntary sector be encouraged to take an active role in support of our recommended policy of discouraging the use of marihuana.

COMMISSION MEMBERS

By law, the National Commission on Marihuana and Drug Abuse has 13 members. Nine public members were appointed by the President who also named the Chairman and Vice Chairman (five maximum from one political party).

Of the four congressional members, two were named by the President of the Senate and two by the Speaker of the House (two from each political party).

Raymond P. Shafer, Chairman, former Governor of Pennsylvania, Chairman of the Board and Executive Director, Teleprompter Corporation, New York.

Dana L. Farnsworth, M.D., Vice-Chairman, former Director of Health Services, Harvard University, Cambridge, Massachusetts.

Henry Brill, M.D., Director of Pilgrim State Hospital, West Brentwood, New York.

Representative Tim Lee Carter (R-Kentucky).

Mrs. Joan Cooney, President of the Children's Television Workshop and Producer of "Sesame Street," New York, New York.

Charles O. Galvin, Dean of Southern Methodist University, Law School, Dallas, Texas.

John A. Howard, Ph.D., President of Rockford College, Rockford, Ill. and President of the American Association of Independent College and University Presidents.

Senator Harold E. Hughes (R-Iowa).

Senator Jacob K. Javits (R-New York).

Representative Paul G. Rogers (D-Florida).

Maurice H. Seever, M.D., Professor and former Chairman of the Department of Pharmacology, University of Michigan, Ann Arbor.

J. Thomas Ungerleider, M.D., Assistant Professor of Psychiatry, U.C.L.A. Neuropsychiatric Institute, Los Angeles.

Mitchell Ware, Attorney, Mazza, Mazzio and Ware, Chicago, former Superintendent of the Illinois Bureau of Investigation, Chicago.

REMEDY OR PUNISHMENT?

(Mr. ASPINALL asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. ASPINALL. Mr. Speaker, the phenomenon of local and regional problems having a "ripple" effect on the national welfare is not uncommon in this Nation and I take this opportunity to call such a situation to the attention of my colleagues. The contribution of Western reclamation to the benefit of the whole Nation has been recited on numerous occasions throughout this century, frequently in response to vague and unfounded criticism.

On May 26, 1964, I spoke to my colleagues here in the House of Representatives on the subject of the reclamation program and the following statement is just as valid today as it was then:

The multipurpose reclamation program carried on through which the Department of the Interior's Bureau of Reclamation is the principal instrument through which the Federal Government, guided by the Congress, seeks to develop the water and related land

resources of the arid and semiarid western lands. The dry West comprises more than one-half of our Nation's total land area. It is the most rapidly growing sector of our economy and ranks as the best and most important customer, client, branch office and factory of the long-established business and industrial community of the Eastern States.

The continued well-being and growth of the West—and the East—depends in large measure on the successful development and wise use of a single natural resource. That resource is water.

The development of that resource, Mr. Speaker, is at a critical crossroads as described in a statement by the director of the Colorado Water Conservation Board, Felix L. Sparks. To those who have any question about Mr. Sparks' statement, I suggest that the scientific principle that says, "For every action there is an equal and opposite reaction," has application in political science, as well. When considering the reaction of Mr. Sparks and the rest of us who associate ourselves with him, please consider the action which has prompted it.

The statement follows:

WASHINGTON, D.C.,

March 20, 1972.

Mr. Chairman and Gentlemen of the Council:

I appear here today as a representative and director of the Water Conservation Board of the state of Colorado at the direction of the members of that board to express opposition to many of the salient features of the proposed principles and standards. The Colorado Water Conservation Board is charged by statute with the responsibility for protecting, developing and conserving the waters of the state of Colorado and the prevention of floods. The board has overall responsibility for state water planning and has the specific responsibility of coordinating its activities with those of other states and the federal government. It was one of the first state water planning agencies established in the United States and has functioned in this capacity now for over thirty years.

The state of Colorado supported the enactment of the Water Resources Planning Act in 1965. We were in accord with Section 103 of that act which directs this council to develop uniform procedures for federal participation in the planning and development of this nation's water resources. We are, however, appalled at the results.

The principles now under consideration have been proposed for the use of the many thousands of people in the state and federal governments who are responsible for water resource planning. They should, therefore, be comprehensible to the average person engaged in such endeavor. Unfortunately, the principles consist mostly of random economic theories expressed in rambling and extensive prose. No precise analysis of much of the verbal garbage contained in the proposed principles is possible. However, the conclusion is inescapable that an initial decision was made that water resource development is an evil thing which could be best controlled by a process of bureaucratic strangulation. While it was not easy to reach these conclusions in the mind-numbing process of analyzing the proposed principles, we offer the following supporting observations.

The water resource planning process is already a time consuming and costly endeavor. The average time lag for projects in Colorado from date of initial study to construction exceeds twenty years. For many projects this time lag has exceeded thirty years. It can hardly be argued that water resource projects are hastily conceived and thereafter hastily constructed. Nevertheless, this interminable delay is to be stretched out even further, and perhaps into the millennium,

if the proposed principles are adopted. The ingredients for this delay are contained in the quixotic assumptions that everyone from the man in the street to the man in the White House should be directly involved in the planning process, assisted by layer upon layer of governmental agencies.

The more obvious tool for delay is the fluctuation of the so-called discount rate. This fluctuation is not new but only aggravated by the proposed principles, as I shall illustrate.

In 1965 a series of disastrous floods occurred in the state of Colorado with the tragic loss of over twenty human lives and staggering property damages in excess of a half a billion dollars. The greatest flood in terms of water volume, but not in property damage, occurred in the Bijou Creek drainage of northeastern Colorado. The Corps of Engineers was immediately requested, among other things, to initiate planning leading to the control of floods on Bijou Creek. By late 1969 the Corps had developed a feasible plan for controlling floods originating in that area. Those plans were then submitted for review at the Washington level, but a funny thing happened. They were returned to the Omaha office for reformulation using a new and higher interest rate. Under this new criteria, the Corps presented its revised plans to the state water board about two weeks ago, almost seven years after the 1965 flood. The revised plan drastically reduces the previously planned control of Bijou Creek floods. Since this revised plan cannot be submitted to the Congress before next year, it will be subject to another new and increased interest rate if the proposed principles are adopted. And so ad infinitum.

It is most interesting to note that the proposed principles apparently place no value on human life nor on human suffering. Apparently these elements have no monetary value.

Having made these generalized unkind observations, I would like to turn to a few more specific criticisms, including the proposed seven percent discount rate. I do not purport to fully understand the theoretical opportunity cost of federal investment as it relates to the discount rate, a rate actually described in the principles as being at ten percent. This rate apparently is borrowed from a study made by a Mr. J. A. Stockfisch in 1969 for the Institute for Defense Analyses. If in fact the average rate of return on the investment of private capital is ten percent, then the millions of Americans who annually invest their capital at a lesser rate should be somewhat surprised. Why, for instance, should Americans invest millions of dollars annually in treasury bills which are currently returning less than four percent. Perhaps all investors should hold out for a ten percent rate, or even seven percent. The results on the American economy would be interesting and probably catastrophic.

The originators of the proposed discount rate also suggest that the opportunity rate is based in part on the alleged fact that the federal government foregoes tax revenues when it competes with the private market to build water resource projects. It has long been my understanding that the federal government taxes the interest which is received by investors on government securities. No weight apparently was given to this fact, nor the fact that water resource projects in themselves generate considerable tax revenues, or, in the case of flood control projects, reduce tax deductions by reducing casualty losses.

I realize that these criticisms of the proposed discount rate may not be accurate. Those of us who live in the real world sometimes find it difficult to adjust our thinking to the Olympian world of abstract economics. Nevertheless, the proposed rate smells more like a device to prevent further water resource development in this country than it does to promote the welfare of its citizens,

a welfare based to a major extent on the use of water and the prevention of water-caused disasters.

In the event the proposed discount rate is not sufficient to destroy federal participation in water resource development, the five year construction start requirement can be used to administer the coup de grace. As we read the proposed principles, authorized projects on which actual construction or other similar activity is not commenced within five years from date of authorization will be reviewed in accordance with the proposed principles. The words "or other similar activity" are confusing. We know of no activity which is similar to construction except construction itself. We urge that as a minimum change, the Council consider inserting the words "or advance planning", in lieu of the words "or other similar activity".

It is extremely rare to have construction commence on any project within five years from the date of authorization will be reviewed in accordance with the proposed principles. The words "or other similar activity" are confusing. We know of no activity which is similar to construction except construction itself. We urge that as a minimum change, the Council consider inserting the words "or advance planning", in lieu of the words "or other similar activity".

It is extremely rare to have construction commence on any project within five years of date of authorization. The time lag between authorization and the initial appropriation for advance planning is usually at least two years. A time lag of four or five years is not unusual. Advance planning usually consumes another three or four years, primarily because of fiscal limitations.

As an example of the already ridiculous time lag, I cite the example of the Savery-Pot Hook unit, a joint Colorado-Wyoming project. This project was accorded a top priority by the Colorado Water Board in 1938. It was finally authorized by the Congress in 1964. Although advance planning was completed several years ago, construction has not yet started. However, construction funds have been appropriated by the Congress for the past two years but withheld by the Office of Management and Budget. By what legal authority that agency is able to flaunt the laws of Congress, we have not been able to determine. We are not unaware of the domination of the Office of Management and Budget in the preparation of the proposed principles, although the Water Resources Planning Act gives that agency no such authority. The ironic comedy of the five year limitation is that the Office of Management and Budget can, and is, making it impossible to get project construction started within the five year period.

Insulated and protected from normal democratic procedures, the administrative branches of this government are rapidly assuming the total executive, judicial and legislative functions separately reserved by the Constitution. If the laws enacted by Congress can be ignored and rejected by the shadowy fourth body of administrative government, the question remains as to why we bother with the elective process in the first place.

During the past decade, ten multi-purpose water resource and flood control projects have been authorized by the Congress for construction in the state of Colorado, on which construction has not yet started. Because of past fiscal limitations, there is no way that construction on seven of these projects can be started within the proposed five year time limit. With a little more help from the Office of Management and Budget, the other three projects can also be pushed into the never ending cycle of re-analysis. Cumulatively, over 200 years of planning effort and several millions of dollars have been applied to achieve the present status of these projects. Now it is proposed that the hopes,

dreams and aspirations of thousands of our citizens be callously crushed by administrative fiat. We may be forced to submit to this type of administrative tyranny, but not without a fight.

We vigorously dissent to this limitation in all of its aspects. Its adoption would constitute a flagrant invasion of the powers reserved to the Congress. Its use would constitute an effective veto over acts of Congress in a manner neither contemplated nor permitted by the Constitution or statutory law. Not even a tortured construction of the Water Resources Planning Act can justify this limitation as a part of planning principles and standards. We therefore urge that this provision be eliminated.

The proposed principles provide that: "The regional development objective will be used in formulating alternative plans only when directed." While we are not sure what this means, the statement appears to violate Section 104 of the Water Resources Planning Act. That section plainly states without reservation that special regard shall be given to achieving optimum use of water in the area involved. While national goals are also to be given special consideration under the quoted section, there is nothing in the act which indicates that national goals are to have any preference.

Neither national goals nor the national economy are separate entities. They are merely the total of many component parts. National goals are at the best difficult to define and are constantly changing. If regional objectives must be subjugated to some mystic and ever changing national goal, then this nation is doomed to stagnation. We therefore urge that the proposed principles follow the mandate prescribed by Congress.

We note that the Council reserves the authority to amend whatever standards are adopted from time to time. This provision appears to be necessary and in accordance with the powers granted by the Congress. However, we find neither comfort nor justification in the statement that such amendments are subject to concurrence by the Office of Management and Budget. The question naturally arises as to whether or not Congress created a Water Resources Council or a subservient arm of the Office of Management and Budget. A careful reading of the Water Resources Planning Act does not reveal that the Office of Management and Budget was to play any part in the formulation of water resource planning principles. This is a futile argument, but we make it anyway.

It has been reported that a former huckster for Lipton tea has made the statement: "All dams are an obscenity. Floods and pestilence have been a means of controlling population." The gentleman is entitled to his opinion, but there are others who would disagree. There are people in West Virginia today, both living and dead, who would certainly disagree. I know from past association that this Council would also disagree with the statement, but I am not so sure about the other agency which participated in the preparation of these proposed principles.

In Colorado, as in most western states, about fifty percent of our total yearly water supply flows down our rivers during two months of the year. In order to support our current population and economy, we must store the excess waters of the spring runoff for use during the remainder of the year. This requires dams.

Most civilizations and their cities developed along perennial streams and rivers. Such was and is the case here in the United States. I am sure that most people do not feel that they should be drowned or their property destroyed because of mankind's ancient habits. Flood protection also requires dams. If all of these dams are obscene, then let us be classed as an obscene people.

We believe that the proposed principles

and standards for water resource planning unjustly and illogically single out water resource development for discriminatory treatment. We know of no other governmental activity, either federal or state, which is subjected to a similar discount rate or planning procedures.

There have been, and probably will continue to be, errors in judgment in the development of our natural resources and the treatment of our environment. Remedial measures are necessary. However, the proposed principles appear to be more punitive than remedial. We therefore urge that they be revised in their entirety in a comprehensible form, with the objective in mind that both water resource development and flood control will forever be essential to the welfare of the people of this nation.

WHY SOVIET ARMS WORRY UNITED STATES

(Mr. WAGGONER asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. WAGGONER. Mr. Speaker, I think it is vitally important that we in the Congress are aware of what our top Defense specialist is saying about Soviet military capabilities and what is needed on our part to insure an adequate defense posture for our country.

In a recent interview, Secretary Laird said:

Based on the evidence I see, it is my belief that the Soviet Union is trying for military superiority over the United States by the latter part of the 1970's and during the 1980's. And we are not matching this effort at the present time.

We can ill afford not to maintain that level of technological superiority we now hold over the Soviet Union. To pursue a course of unilateral disarmament as some would have us do would be catastrophic for the United States.

For the benefit of our colleagues, I insert the entire interview of Secretary Laird as appears in the U.S. News & World Report for March 27 following my remarks:

INTERVIEW WITH DEFENSE SECRETARY LAIRD: WHY SOVIET ARMS WORRY UNITED STATES

Q. Mr. Secretary, your annual Defense Report to Congress has created considerable discussion. What do you mean by the new "strategy of realistic deterrence" you are putting into effect?

A. I am pleased with the growing discussion of national-defense issues which this report, together with the President's Foreign Policy Report which preceded it, have brought about.

What we are talking about is peace—how to achieve it and how to maintain it.

Essentially, my report to the Congress tells how we are achieving the transitions from war to peace, from a wartime economy to a peacetime economy, from a draft-dominated armed force to one peopled with volunteers, and from an era of confrontation to an era of negotiation.

I believe the American people are coming more and more to understand that the Nixon Administration has made fundamental changes in how we plan for our nation's safety and security, and for achieving the President's goals of peace and of an improving quality of life for all Americans.

The strategy of realistic deterrence is the Defense Department's plan for implementing the Nixon Doctrine and the strength and partnership pillars of the strategy for peace outlined by our Commander in Chief. Mean-

ingful negotiations—the third pillar—are made possible by adequate strength and stronger partnerships.

Q. Is the U.S. maintaining its military strength in today's world?

A. Not as much as we should be, particularly in the area of maintaining technological superiority.

I believe we have adequate defense forces today, but I am concerned about the period from 1975 on. I don't want any future President of the United States to be in a position where he has to crawl to any negotiating table anywhere in the world. That's what we are talking about as far as the real issues of the defense budgets are concerned—the maintenance of the future strength of the United States.

Since I became Secretary of Defense, I have tried to inform Congress and the American people about the program that the Soviet Union embarked on in 1965 to modernize both their conventional and strategic forces. Based on the evidence I see, it is my belief that the Soviet Union is trying for military superiority over the United States by the latter part of the 1970s and during the 1980s. And we are not matching this effort at the present time.

For example, our research-and-development requests to the Congress in recent years have been cut substantially.

Q. What can you tell us about these cuts?

A. Take fiscal year 1972 [which ends June 30]. That budget did not pass the Congress until last December, six months after the fiscal year began. We had asked Congress for an 800-million-dollar increase in research and development to maintain the technological superiority which is so important to the future of this country. Congress cut that requested increase by 50 per cent—400 million dollars out of our total research-and-development request for fiscal 1972. You can't maintain technological superiority that way.

In this year's budget, we are asking Congress for 1 billion dollars more than they gave us last year. I hope that the Congress will recognize that in a free society which is competing with a closed society technological superiority is an absolute must.

Q. What about reports that the Russians are dismantling some of their armaments?

A. The only things they are retiring are obsolete ships and weapons systems in favor of new ships, new aircraft and new types of strategic and theater missiles.

They are going forward at a tremendous rate with their naval construction, both conventional and nuclear. In the nuclear field, they now have under construction or in being about 43 of the Y-class submarines, each carrying 16 ballistic missiles.

Our ballistic-missile nuclear-submarine force consists of 41 Polaris-Poseidon ships. Looking to the future, what concerns me is that the Soviet Union by the end of next year will likely move ahead of us in numbers of Polaris-type submarines. At the present rate of Soviet construction—if we decided to construct any ballistic-missile nuclear submarines—they would have over 70 by the time we could build and have operational No. 42.

Q. What can you tell us about land-based missiles?

A. As you know, the Soviet Union has already moved ahead quantitatively in land-based missiles. They have more than 1,500 missiles capable of reaching targets in the United States. We have 1,054—the same number approved by the Congress in the mid-1960s.

Q. How do the two nations compare in strategic bombers?

A. We have some 500 bombers assigned to the Strategic Air Command at this time. This number includes about 70 of the smaller FB-1s, with the remainder of the force composed of B-52s. The Soviets have about 200

bomber aircraft assigned to their long-range-aviation forces. About 50 of these are configured as tanker aircraft for in-flight refueling. They also have built and are flying several of their new "Backfire" bombers.

Q. Well, then, why aren't you worried right now?

A. There is a simple answer to that. We have superiority today because of our technology. We have, I believe, a two-to-three year lead over the Soviet Union in technology, in the Poseidon submarine and the Air Force's Minuteman III with their multiple independently targeted re-entry vehicle (MIRV).

However, their land-based missiles are bigger than ours and therefore have a greater "throw weight" than ours. By that I mean their bigger boosters give them a greater capability to deliver more and bigger warheads with their existing missiles than we have in our existing forces.

Given their technological capabilities, I'm sure they can match our technology within two or three years.

That is why it is absolutely essential that we maintain technological superiority over the Soviet Union, and why I put such a high priority on our research-and-development budgets for the Army, Navy and Air Force.

That is also why it is so important to us in the Department of Defense that the United States seek a really adequate limitation of strategic arms, not only defensive but offensive weapons as well.

As President Nixon made so clear last May 20, it is essential that any agreement between the United States and the U.S.S.R. must include offensive as well as defensive-weapons limitations. The safety and security of the American people require this.

That is why, as I have stated before congressional committees, we cannot accept a ceiling on anti-ballistic-missile systems [ABM] without a ceiling on land and submarine-based offensive missiles as well.

Q. Do you think the present negotiations between the U.S. and the Soviet Union for a strategic-arms-limitation treaty will produce suitable results for us?

A. At present, we feel that in the not too distant future we and the Russians can move from arms competition to strategic-arms limitation and from there to limitations on other types of weapons, including conventional weapons. Also, I would hope we can move toward mutual limitations on military assistance, another area where the Soviets have placed great emphasis in recent years.

But it is my strong view that it would be a great and dangerous mistake for the U.S. to take unilateral disarmament actions. In short, we must have verifiable mutual-arms-limitation agreements.

Q. What do you mean by verifiable?

A. Let me be perfectly candid with you. President Nixon is leaving no stone unturned in his pursuit of better relationships with the Soviet Union. But let us not forget, either, that the President recognizes full well the profound differences and disagreements that will continue to exist between the Soviet Union and the United States.

We cannot eliminate those differences overnight, because they have to do with different ideas about the rights and responsibilities of men and governments, and about different approaches in dealing with other nations.

I believe that great nations today can be peaceful adversaries without being belligerent antagonists. But to continue to move in this direction we must have confidence on both sides that any agreements we do enter into are, in fact, being honored.

To put it bluntly, this President and this Secretary of Defense are not going to place the destiny of the United States, or of our friends and allies, at the mercy of the hoped-for good will of any other power. That's why verification is so important as we seek to resolve what can be resolved in our relation-

ships with the Soviet Union and to control what cannot be immediately resolved.

Q. What are some of the things the Department of Defense is doing now to keep our forces ahead technologically?

A. Let's take this year as an example. We have asked Congress for a supplemental appropriation of 35 million dollars to enable us to go forward with what, for the time being, we call ULMS—the undersea long-range-missile system. Shortly, we will be announcing a new name for the ULMS. This is a successor to the Poseidon nuclear submarine, which itself is a conversion of the Polaris submarine which was developed in the 1950s.

As a matter of fact, as a member of Congress I sponsored the amendment appropriating more than President Eisenhower's Administration asked for in its 1957 budget for building up our Polaris force.

Today, I might add, the tendency of Congress is to cut rather than increase military appropriations. Other key programs in the pending defense budget include the B-1 strategic bomber, the airborne command post, and the F-14 and F-15 aircraft.

When I was a member of Congress, representing the seventh district of Wisconsin, I was often distressed when the executive branch refused to recognize the coequal status of the Congress in national-defense responsibility and refused to spend "add-on" money voted by the Congress for national defense.

Let me tell you that this is one Secretary of Defense who will spend every dollar over and above our requests that Congress deems necessary. I have made this position known at every opportunity in my testimony before Congress in the last three years.

"WE ARE STANDING STILL"

Q. Aside from nuclear-ballistic-missile submarines, how does the Soviet Navy compare with that of the United States?

A. Well, they've gone forward also in attack-type submarines which are nuclear powered. They outnumber us in this area. They are also moving ahead vigorously in major surface-combatant-ship construction, including a very large cruiser with multiple missile systems.

We aren't standing still, of course, in ship construction in the face of this momentum. When I became Secretary of Defense we were spending less than a billion dollars a year on our shipbuilding and conversion program. We increased that to 2 billion dollars within a year, upped it to 3 billion last year, and now are asking for about 3.6 billion dollars.

Of course, our concern about the nature and scope of the Soviet threat is not confined to their impressive gains in nuclear and naval capabilities. For example, as I noted in my Defense Report, Soviet and other Warsaw Pact forces continue their growth both in quality and in quantity, including new tanks, lift forces, and several new types of aircraft.

Q. What has been the extent of our slow-down in arms spending?

A. In total defense-budget terms, from fiscal year, 1969, to our proposed fiscal year, 1973, budget request, we have gone down from about 9 per cent to about 6.4 per cent of our gross national product for national-security outlays, and from about 45 per cent to 31 per cent of total federal-budget outlays. Those figures represent 20-year lows.

Much of that reduction, of course, is attributable to the winding down of the war in Vietnam and to implementation of our new strategy of realistic deterrence.

While it is difficult to draw exact comparisons, the Soviet Union continues to devote a greater share of its gross national product to national security than we do. In money terms, while they are operating from a GNP about half the size of ours, they are spending in U.S. dollar equivalents just about the same amount as we are on na-

tional security. And, of course, their commitment to North Vietnam has averaged somewhere between 500 million and 1 billion dollars annually since 1965, while the U.S. had to devote as much as 22 billion dollars in its peak spending year—1968—to the war in Vietnam. Furthermore, the Soviet Union puts from 30 to 35 per cent of its military budget into manpower-related costs. We spend from 52 to 56 per cent of our military budget for such costs.

So, even with the great burden of U.S. Vietnam costs steadily declining, the personnel-cost disparity in the two budgets leaves Soviet planners with approximately 65 to 70 per cent of their budget for modernization in such areas as strategic forces, shipbuilding, and other improvements in missiles and conventional forces against roughly 45 per cent available to our planners.

Now, if you project that ahead for five to seven years in terms of actual money available for modernization in U.S. nuclear and conventional forces, you can see that we could be in trouble in the last half of the 1970s if you assume that the Soviets are spending at about the same over-all rate in defense programs as we are.

Q. What's the answer?

A. A top priority, let me repeat, is to maintain technological superiority. We also must move ahead with the weapons-modernization programs for all our active-duty forces and with the increases I've asked for in the National Guard and Reserve programs.

We also must have a strong and effective security-assistance program to help our friends and allies under our new "total-force concept." In talking to students and other Americans, I stress the point that we intend to avoid future Vietnams—that we no longer intend to be the cop on every beat—but we don't intend to cop out on our world leadership role, either. To make that commitment work, we need a strong military-assistance program, and Congress has to support it.

The only other alternative is to cut back on our treaty commitments and accept a free-world security gap—but I don't see any bills being introduced in the Senate with any support to repeal any of those commitments that have been entered into under our constitutional processes, including Senate ratifications.

I think these measures, if we can go ahead with them, can and will meet the Soviet challenge, deter war and restore and preserve peace.

Q. Are you getting the support you need from Congress?

A. Not entirely. Last year, for example, Congress cut our requests by about 3 billion dollars.

BEYOND "MILITARY REALITIES"

Q. Is it true, as some Democratic politicians are saying, that we now accept the principle of armed parity with the Soviet Union instead of superiority?

A. Let me put it this way:

In my view, a vast majority of the American people may perhaps be willing to accept parity in the area of strategic nuclear weapons, but under no circumstances would they or should they accept inferiority. Certainly, as Secretary of Defense, I would never recommend or accept inferiority.

The sufficiency of our armed forces is a matter that cannot be judged strictly from the standpoint of military realities. Global political realities are also very much involved. I am concerned about what the political effect would be on our allies—or, for that matter, on the people of the United States—if the Soviet Union acquired a vastly superior nuclear force, whether on land, at sea or in the air.

In other words, it is crucial to the achievement of lasting peace that neither our own citizens nor our friends and allies ever have reason to question the adequacy of our strength or our resolve.

Q. Do you believe this year's political candidates understand this?

A. All presidential candidates should look at this matter very carefully, for I believe that a vastly superior strategic force in the hands of the Soviet Union is something that no President ever would want to face.

And, gentlemen, let me repeat that this fiscal year, 1973, defense budget that we are fighting for doesn't involve so much the strength Richard Nixon will have as Commander in Chief in his second term. It has much more to do with assuring the necessary strength for the Presidents who will succeed him in the post-1976 period. Our long-range planning takes into account the challenges and requirements that will face our future Presidents.

Q. If you get from Congress what you want for research and development, along with money for construction, what would the United States armed forces get out of it?

A. Let's use an example:

If we go ahead with the ULMS program which I mentioned earlier, the follow-on step from the Poseidon program, the first 10 of the new missile-firing submarines could be replacements for our 10 oldest Polaris-type submarines.

Adm. "Bud" [Elmo R.] Zumwalt, the Chief of Naval Operations, Adm. H. G. Rickover and others here assured me that if we can go forward by April 1 with the design contract for the new-type submarine, we will be able to get the first ULMS by 1978.

The ULMS involves a new system which, as presently planned, will carry 24 missiles and enable submarines to operate out of bases in the continental United States. This means—and it's very important—that it will have a beneficial impact on our crews. This is difficult duty, and as we worked toward the volunteer service and zero draft calls, the idea of nuclear submarines based in the United States is appealing.

Q. What are the Soviet capacities in this area?

A. They are turning out the Polaris-type or Y-class submarines at a current rate of about nine a year, and they could go even faster. These submarines are not as good as ours, because we have a technological lead. Our submarines are quieter and less susceptible to detection.

However, it takes a long time to develop new weapons and techniques, which limits our margin of safety.

Q. Mr. Secretary, do you foresee any immediate changes in the U.S. military position in Asia as a result of President Nixon's visit to Peking?

A. The military position and our military commitments there have not changed. Our treaty obligations have been ratified by the United States Senate. We will maintain those treaty obligations.

Of course, our posture will continue to change somewhat as we implement the Nixon Doctrine, which calls for building stronger partnerships with our allies and helping them to take some of the defense responsibility in their own areas, so the United States will not have to be the cop on every beat in the world.

The Nixon Doctrine also calls for a strong military position on the basis of total-force planning—taking into consideration, that is, the capabilities of our allies and using their available resources to the best advantage in the area that is involved.

All this has enabled us to withdraw a great many of our military forces from Asia—not only from Vietnam but also from other Asian countries. That, as you know, has been going on for some time now. We are in transition from war-fighting forces in Asia to peacetime Nixon Doctrine deterrent forces.

Q. Will there be withdrawals from Asia beyond those planned in Vietnam?

A. Yes, as partnerships with our allies are strengthened. They have to be willing to take over certain responsibilities. After all, these

are mutual defense treaties we have with them, and sometimes that mutuality gets overlooked.

Take, for instance, Japan. That's a mutual-defense treaty, and when I talk to my Japanese friends I certainly try to emphasize that fact. We are providing and will continue to provide the nuclear umbrella. I feel certain that our friends in Japan understand the mutuality of that defense arrangement, which requires from them an increased contribution to the security within their country and within their area, particularly in view of the Okinawa reversion.

Q. Is anybody out there listening to you?

A. I think they are. The proposed defense budget of Japan has been increased—not substantially, but an increase nonetheless.

I think the Cambodians have done very well and the Vietnamese have done well. So have the Koreans and our friends on Taiwan. The Thai, I think, are going better than they have in the past.

Q. What has this meant for the U.S.?

A. It means that we have been able to withdraw well over half a million people from that part of the world. I think the South Koreans are stronger today, militarily, than they were when this Administration took office. Yet we have 20,000 fewer Americans there.

Q. How soon are U.S. forces going to leave Taiwan?

A. I hope that Congress approves the increase over last year's program that we have asked for in our military-assistance program there. I will do the best job I can in defending that increase and, also, the sale of excess military equipment to Taiwan. We are, for example, going to continue our training programs.

Q. But how fast will you withdraw U.S. forces?

A. As we apply the Nixon Doctrine and tensions ease, we will not maintain an American presence there longer than is needed. There are not as many American servicemen on Taiwan as there were when I became Secretary of Defense. We will continue to make withdrawals, based to some extent on our continuing progress in turning over military responsibilities in Vietnam to the South Vietnamese, because that is tied in with our presence on Taiwan.

Q. What about American withdrawal from Vietnam itself?

A. We completed Phase 1 of Vietnamization last year—turning over ground-combat responsibilities to the South Vietnamese. Phase 2, which deals with turnover of logistics, artillery and air support to the South Vietnamese, also is moving along very well. It will, of course, take longer because of the training that is required, but Phase 2 is on schedule or ahead of schedule in all areas.

For instance, the South Vietnamese have taken over responsibility for in-country naval operations and most in-country air-support requirements.

I might also point out that under the Vietnamization program we have withdrawn several million tons of U.S. material, a reduction of some 80 to 85 per cent of the material we had in Vietnam at the peak of U.S. involvement. I think that is quite an accomplishment and a tribute to the superb leadership of Gen. Creighton Abrams.

Phase 3 involves the phasing out of the military-advisory program, and we are into that, too.

Altogether, we will be down to 69,000 American servicemen in Vietnam by May 1, from the high point of the 549,500 authorization when the Nixon Administration assumed office.

The whole program of Vietnamization is going along well, and the South Vietnamese are in a position where they have the capability to handle their internal security—very adequately, I believe. That doesn't mean that they are going to win every time they

meet the enemy. They are going to have some tough fights, because the enemy has substantial capabilities.

Q. When will Vietnamization be officially completed?

A. The third phase takes you down to a position where the total U.S. forces will be lower than at the start of President John F. Kennedy's Administration, when we had about 800 or 900 military advisers in Vietnam.

When Phase 3 is completed, American military presence in Vietnam will be terminated. But President Nixon has made it clear that this will not happen until the question of Americans held prisoners of war has been settled and the missing in action have been accounted for.

Q. Is there any prospect of hastening that?

A. The fastest way to terminate U.S. involvement in the war still is through negotiations. As to the prisoner-of-war issue, I believe that question will be solved when the enemy decides to abide by the Geneva Conventions which he signed and yet is violating in at least 16 different ways at the present time.

The Geneva Conventions are not subject to negotiation. I think the pressure of the Communist world, the nonaligned world and the free world will have to be brought to bear on the enemy to abide by these conventions.

As you know, the President has designated the week of March 26 through April 1 as a national week of concern for our prisoners of war and missing in action. I would also point out that the President, Secretary of State William P. Rogers, and I bring this humanitarian matter to the attention of every foreign leader we see, and I will be doing it again in Europe in May.

REAL IMPORTANCE OF VIETNAMIZATION

Q. Do you expect anything to come out of present negotiations with the North Vietnamese?

A. I have been more optimistic about the Vietnamization program, I think, than anybody else in Washington since it got started. Vietnamization—rather than negotiations—is proving to be the means by which we are terminating American involvement in Vietnam.

Q. But haven't U.S. bombings of North Vietnam been stepped up? Why is that?

A. What has increased recently is the number of enemy firings at our unarmed-reconnaissance flights. And I can assure you that, as long as I am Secretary of Defense and they fire at our reconnaissance aircraft, the escorting planes will retaliate. Our fliers have the authority to strike back when threatened; and they will continue to protect themselves.

SHARING THE BURDEN IN EUROPE

Q. Mr. Secretary, is the partnership idea that you feel is working so well in Asia getting results with our European allies, too?

A. Yes. We have had an improvement in what our partners in the North Atlantic Treaty Organization are doing.

They have moved forward with a billion-dollar European-defense-improvement program. They have also increased their military budgets. The Federal Republic of Germany this year has Cabinet approval for a 13 per cent increase in its defense budget.

Over all, the defense budgets of our European allies will be increased by about a billion dollars, or 6 per cent. In real-term purchasing power, this does not add up to the full 6 per cent because of inflation. Clearly, there is a growing awareness on the part of our NATO allies of the need to share the burden, and the things they have done in the last 18 months are all to the good.

Q. Are they still reducing the number of men they keep under arms?

A. The number of individual servicemen has remained fairly constant. One country,

Denmark, may institute some reductions. We've had communications about this, and I hope they will not do it.

Q. Why does the Pentagon resist so strongly any suggestions of reducing American forces in Europe?

A. As we move from a period of arms competition to a period of arms limitation, this is not the time to take unilateral actions—either on the part of the United States or any of its allies. We feel in the Pentagon—more strongly, I think, than any other department of Government—that it is most important for us to arrive at arms-limitation agreements. Unilateral disarmament in any form, however, would be a dangerous mistake and would weaken the chances for such agreement.

Q. Do you think we can do business with the Russians in the fields of arms control and mutual reduction of forces?

A. It is not a question of doing business. It is a question of arriving at verifiable agreements that would put a downward pressure on the chances of conflict and an upward pressure on the prospects for lasting peace. I believe that we can arrive at agreements in these areas if the compliance is verifiable.

I would always stress the importance of just what means of verification are necessary and of making sure we have those means. In some cases this would require onsite inspection, but in many areas there are other means of verification which can be used.

Q. Turning to another subject, Mr. Secretary, what is the situation in the Mediterranean at the present time?

A. The importance of the Middle East in Soviet strategic planning has clearly increased. They are establishing bases in the Mediterranean area. Their warships have increased their steaming days in the Mediterranean to about 20,000 a year, from the approximately 750 steaming days they averaged in the early 1960s. They are operating there to a much greater extent than we are.

If you apply the total forces of the United States and our allies in that area, we have a realistic deterrent for the next few years. But as this Soviet momentum continues, we must watch the situation closely and, together with our allies, take offsetting actions when required.

Q. How concerned are you about the growth of Soviet activity in the Indian Ocean?

A. The Russians have a greater presence there than we do. It is of concern to us, of course. It should also be of interest to Japan, and I've told the Japanese that. They get a tremendous amount of their oil from that region, and there is a continual stream of ships moving through the Indian Ocean to and from Japan. Unquestionably, Japan must be concerned about insuring that those shipping lanes remain open.

Q. Would this call for a Japanese naval presence in the Indian Ocean?

A. It could.

Q. Will we also have to increase our activities there?

A. We might.

Q. Mr. Secretary, there is a lot of talk about problems of drugs, desertion and racial conflict among servicemen. What can you tell us about the morale situation?

A. We have those problems and we're doing something about them. In drugs, we have instituted a very satisfactory testing procedure to determine drug usage. We're looking to our whole system of military justice as it applies to whites and blacks, and we have set up an institute to help train officers and noncommissioned officers in the handling of racial problems.

Q. What are you doing about the advancement of black officers?

A. We have more black general officers and flag officers than at any time in history. We have carried out a promotion policy to the point where we have our first black admiral.

We are also recognizing women. We have our first women generals in the Air Force and Army, and we will have our first woman admiral in the Navy within six months.

Q. How confident are you that you have reliable and well-motivated people in the armed services—people you can depend on in any emergency?

A. I'm very confident that we have good people and that our "human-goals program" will assure even further progress. We have raised salaries of our lower-ranked enlisted personnel by 325 per cent since 1964. We have made Selective Service a lot fairer, and we are having to draft fewer and fewer men. When President Nixon took office, about 300,000 a year were being drafted. This year, we will draft fewer than 50,000—less than it has been in any year in the lifetime of our draft-age men and women.

Q. Do you think you can do away with the draft entirely and go to all-volunteer forces?

A. We have set a target date of July 1, 1973. This means we will have to recruit volunteers more intensively. To do that we must be able to compete for talent in our high schools and on college campuses.

Q. Are colleges a trouble spot for you?

A. I wouldn't say so. A few years ago college campuses were voting to discontinue Reserve Officers' Training Corps, for example. At some of those campuses now, we are being asked to reinstate it, and we have a waiting list of colleges for our ROTC program.

Q. If you're getting rid of the draft, do you believe that it's time to grant amnesty to those who fled to Canada and Sweden and other places to avoid the draft?

A. No, I do not. Today is not the time—not when we are continuing to use Selective Service and have men involved in Vietnam, held as prisoners or unaccounted for as missing in action. Whether you're talking about blanket amnesty or selective amnesty, it's just not the time to consider the question.

I would point out, however, that our country historically has always tempered justice with mercy.

Q. With the end of the draft in sight, is this going to place more emphasis on the National Guard and the Reserve forces for your manpower in emergency?

A. Yes. For too many years, they have been treated more or less as stepchildren. Their missions too often did not relate to national strategy. Their programs too often did not adequately challenge young men and women. Their equipment was not good enough.

That is why we've asked for an increase of 600 million dollars for the National Guard and Reserve program. That is why we're going to transfer a billion dollars' worth of equipment to the Reserve and National Guard in fiscal year 1973—the highest level of equipment ever transferred to them.

Along with that I have assured Congress and the Governors of our 50 States that we're going to give them increased responsibilities in our total-force planning. Guardsmen and Reservists understand that in case of another emergency, they will be called first. It won't be like Vietnam where we used draftees and shunned the trained men of the Reserve and the National Guard.

Q. Mr. Laird, moving over to domestic politics for a moment, what role do you expect to take in the 1972 presidential campaign?

A. I plan to discuss as much as I can with the American people the importance of effective national-security planning. I won't be making purely partisan political appearances, but I won't hesitate a moment to defend national-security programs which I believe are essential to the safety and security of our country.

I would welcome invitations from the Democratic and Republican platform com-

mittees to testify on the nonpartisan issue of national security.

Q. What are your plans if President Nixon is re-elected to a second term?

A. After the President's re-election, I plan to spend some time with my family. As to what I will do after that, it has been my policy as Secretary of Defense not to make unnecessary forecasts or predictions, and I'm not going to make a personal exception to that policy right now.

OLDER AMERICANS FOOD PROGRAM

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, I am sure you know how deeply gratified that the Congress has now authorized the program of better nutrition for the elderly which I proposed in 1970. I am also very pleased by the favorable response this legislation has received throughout the country. An excellent example, I think, is the following editorial by Mrs. Virginia Weldon Kelly, which appeared February 22, 1972, in the Long Beach, Calif., Press-Telegram:

HOT MEALS FOR THE ELDERLY COMING UP

President Nixon has endorsed the legislative measure, passed by the House on Feb. 7, to provide a hot meal at least five days a week for the nation's elderly. There are 23 million 60-plus citizens.

Almost identical legislation was passed unanimously by the Senate in November.

The legislative authorizes \$100 million for fiscal year 1973 and \$150 million for fiscal year 1974.

Sponsors of the measure expect that President Nixon will sign the legislation about March 2 in a White House ceremony.

House sponsors were two Democrats, Claude Pepper, Florida, and John Brademas, Indiana. The bi-partisan Senate sponsors are Edward Kennedy, Massachusetts, and Charles Percy, Illinois.

Rep. Pepper has been a pioneer in working for hot meals for those 60 or more.

Pepper asserts that the longer older Americans can remain in their own homes, the better their physical and emotional health will be, and the less will be spent on nursing home care under Medicare and Medicaid. He points out that 25-30 per cent of the nation's elderly suffer from "tea and cast" malnutrition.

The program is general primarily towards the poor but meals and other nutrition services would be available to those better off on an ability to pay basis.

Under the two-year program, the federal government would finance up to 90 per cent of the cost of state-sponsored hot food programs for those 60 and older.

The programs would be operated for the states by public or private institutions or catering services, agencies, church groups, or political sub-divisions. It is expected that church homes, other benevolent groups, and retirement villages could participate.

Hot meal programs would be set up in church halls, schools, firehouses, senior citizen centers, service clubs, and other well located places.

Older citizens will be given preference in employment in the program, but there will be opportunities for teen-agers who need jobs. The Congress hopes that thousands of high school and college students will give their services along with more mature volunteers.

Each meal would be required to provide at least one third of the calories and bal-

anced diet recommended by the Food and Nutrition Board of the National Academy of Sciences National Research Council.

It is also hoped that participants can take home a cold meal for supper.

Transportation to and from the meals would be taken to those who are temporarily or chronically ill.

A recent survey has revealed that only 12,000 shut-ins in the nation are now receiving meals-on-wheels operated by churches and other groups.

The special nutrition program was also suggested by the White House Conference on Food, Nutrition and Health in 1969.

The scope of the problem was outlined recently in the report of President Nixon's Task Force on Aging. It stated that insufficient income was only one of the causes of malnutrition. Other causes include: physical inability to shop or to cook, chronic disability, lack of knowledge on nutrition—and loneliness.

This week in a Connecticut Avenue chain supermarket, a 92-year-old woman, leaning on a cane, said she had walked three blocks in 23 degree weather. She bought a pint of milk but did not buy a loaf of bread for her supper. She could not carry it. A reporter took her home. On the way, she said she had never heard of the new nutrition legislation.

One of the biggest problems, congressional leaders say, will be informing the elderly.

Mrs. Richard M. Nixon's special interest is volunteerism. The Older Americans Food Program can be a worthwhile interest for everyone.

ADDRESS BY HON. WILBUR MILLS

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, on March 3 at Atlanta, Ga., at the second National House Staff Conference Institute for the Study of Health and Society, the distinguished gentleman from Arkansas, chairman of the House Ways and Means Committee, Hon. WILBUR MILLS, delivered a very significant and able address setting forth a comprehensive program to provide for the health needs of the people of this country.

In view of the concern that all of the American people should have access to the best of medical and hospital care, it is a matter of special interest to observe the deep study and the broad understanding which Mr. MILLS exhibits in respect to this critical subject. Since legislation of this character would come from the Ways and Means Committee of the House, the thinking of Chairman MILLS is particularly meaningful to Members of the House and to the people of our country. Mr. MILLS is respected by all the Members of this House, as well as by the Members of the other body, as a man with an extraordinary grasp of the problem of adequate and proper medical care, as one possessing a great knowledge in this and related fields, and as a most important figure in the passage of such legislation.

Therefore, Mr. Speaker, so that my colleagues and fellow countrymen might profit by Mr. MILLS significant thinking in this most important field of health care, I ask that his address appear in the Record following my remarks:

REMARKS OF CONGRESSMAN WILBUR D. MILLS

Good morning, ladies and gentlemen. I very much appreciate the invitation to be the keynote speaker at this, the Second National House Staff Conference. And I want to thank Doctor Roy, the distinguished Representative from Kansas, for his introductory remarks. He has already established a well-deserved reputation in the House on health matters.

The wide ranging subject matter which will be taken up by your conference over this weekend illustrates once again the active period of ferment and change which permeates the health field today. This period of reexamination of priorities and methods in health is most obvious among physicians themselves. And this is a most encouraging sign. I have become convinced from my experience as a legislator over the last 30 years that legislation cannot by itself drastically modify an industry as large and as complex as our health industry. I must say, though, it appears that the threat of legislation has some influence on encouraging the health professions to recognize and seek solutions to serious problems in American health care. But whatever the motivation, I am greatly pleased to see the active consideration of these problems and the work toward finding solutions to them so clearly illustrated in this conference.

While the motivation for change must come largely from within the health professions, if we are to see real rather than merely paper progress, there is much that government can do to support that progress. I would like to take the major part of my time discussing in general terms what the government's role might be, but a word or two first about the present situation.

This audience is well aware that government already plays a very substantial role in health. And you know that the debate surrounding national health insurance is not whether the government should become involved in health but how much more and in what way. The magnitude of the present government role can be illustrated by two simple facts. The first fact—two government programs alone, medicare and medicaid, are paying out more money in this fiscal year for patient care than will all of the private health insurance organizations combined. The second fact—out of a total of \$75 billion in fiscal year 1971 spent for health, government at all levels paid \$28.5 billion, or 38 percent.

What additional activities are appropriate for government in meeting our present problems? Let me try to answer that in terms of what I see as possible major elements in any national health insurance legislation likely to be approved by the House of Representatives.

The first element will likely be a new program of health care for the poor. The present medicaid program, while it has done much to improve health care for the poor, needs to be replaced with a program which will make a uniform set of benefits, at least as comprehensive as those available to the middle income groups, available to all of the poor in all areas of the country. The Administration bill, as you know, meets none of these conditions.

The second element will be a program to improve the health insurance protection, both in quality and quantity, available to the great bulk of Americans in the middle income groups. I will not repeat for this audience the date which indicate the spotty coverage and irrational premium setting devices which characterize our present arrangements. Just as one example, a musician who supports his family by entertaining the patrons in a small restaurant more than likely has to pay twice as much for the same health insurance as his neighbor who works

in a small factory. Why is this? Because private health is not very likely to underwrite a low-cost insurance policy in a small restaurant.

I believe government can help in this area by providing the mechanism under which virtually every American family, regardless of its situation, will have the same basic coverage at about the same price. And I believe that we can do it without having to place on the Federal bureaucracy the entirely impossible administrative task of managing our entire health complex.

For employed Americans and their families we can follow the general idea of our existing workmen's compensation programs by requiring that all employers provide a basic set of health benefits largely at employer cost. In this way we could avoid the serious problems inherent in the Administration bill where the employer merely has to offer the insurance. We could quite easily and appropriately extend the purposes of the unemployment compensation program to include maintenance of health insurance protection during periods of unemployment. I would, however, have employers, employees and the government share equally in the cost—employers should not be asked to shoulder the entire burden.

We will also need a system to assure basic benefits to the self-employed and perhaps small employers. The Administration bill would attempt to rely upon risk pools to accomplish this objective but their spokesmen admit they have not been able to find a way to do it. It may be that we will have to develop two or more nationwide options under government auspices to provide health insurance coverage to these groups on at least as favorable terms as those for employees of large firms.

With these three major elements, mandated health coverage for the employed and self-employed and their families, continuation of the coverage during periods of unemployment, and the same benefits for the poor, we will have constructed a system which will provide the same basic benefits to virtually all Americans.

And as a supplement to all of these we will need a system for meeting catastrophic health costs. But I have become pretty well convinced that the catastrophic element of the bill must measure the catastrophe by comparing the amount of a family's medical expenses with its financial situation. That seems to me to be essential, since what is a catastrophe in one family would not be in another. The working family man with a wage of \$9,000 a year can be bankrupted a lot easier than a man with an income of \$100,000. An approach which would relate health costs to taxable income would seem to hold the most promise of assuring adequate protection for those who need help while avoiding spending public funds for those who do not need it.

While these are the major steps we might take to meet problems of inadequate insurance protection against health costs, there are problems related to health care delivery and costs which we will also need to consider. We cannot deal with the demand side of health care without looking into the supply side.

While there is not time for me to go into all of the things we might do to improve the delivery of health care I would like to mention a few possibilities. But before I do let me remind you that one common theme in the hearings last fall on health insurance was the need to use the payment system to encourage change in delivery. To apply an old adage, we are being asked to call the tune as the ones who pay the piper. I think we will call a few tunes, not to put the bureaucrats in charge of health, but to give support to positive forces for change in health care.

For example, we could require private in-

surers as well as government programs to use medical foundations, called a professional services review organization under the Senator Bennett amendment, to perform all utilization review functions. And we could add to that a provision setting up a medical group at the national level composed of representatives of the various medical specialties to advise local foundations about current changes in recommended diagnostic and therapeutic practices.

The Administration has recommended that third party payments not be made for health facilities which have been built or expanded without specific approval of a health facilities planning agency. We will give this proposal serious consideration. These are just two examples of the tunes we might call. Before we complete action on this bill there might be quite a medley of tunes.

Before I conclude my remarks this morning there is one other element of a national health bill which I personally believe is very important. Our present maternal and child health and crippled children's program—title V of the Social Security Act—needs to be substantially augmented. This program has demonstrated its capacity to markedly reduce infant mortality and to improve the health of children and their mothers wherever it is in operation. In fact, this program may very well account for most of our improvement in infant mortality rates in recent years. We can no longer tolerate an infant mortality rate in one census tract twice that of the next census tract which happens to have a maternal and child health project. We know we can reduce mortality so now we must.

This program has shown also that we must recognize a special need among at least some portion of the poor. It will not be enough to give a basic benefit package to those living in some of our ghettos if we do not accompany it with programs which will educate them in how to use health care and which will assure the availability of quality health services. I do not believe in a two-level health system—one for the poor and one for the rest of the population and we will do everything we can to avoid it.

In conclusion, I would like to repeat what I said at the outset. The impetus for real and lasting change in our health system to meet its problems must come largely from those working within the system. The problems of rising cost of disorganized and ineffective methods of providing health care, of increasing dependence on foreign medical graduates so desperately needed in their own countries, and other problems to be discussed in this conference cannot be solved by government alone. Legislation can effectively support forces for change, it cannot create them. We in Congress will continue to view carefully the steps you are taking to meet known problems. We will need your thoughtful advice on how legislation can best support emerging solutions to the problems. I hope you will give us your help freely and objectively, so that together we can work toward a health financing and delivery system which will be what all Americans deserve.

INCREASING SOCIAL SECURITY BENEFITS: CONTINUING STRUGGLE NEARS SUCCESS

(Mr. BINGHAM asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. BINGHAM. Mr. Speaker, it is with great pleasure that I have today joined with my good friend and colleague from California (Mr. BURTON) and other Members of the House, in writing to the distinguished chairman of the House Ways and Means Committee, WILBUR

MILLS, expressing our support for his recent announcement urging that social security benefits be increased 20 percent. As the sponsor of legislation proposing a 20-percent increase, I am particularly encouraged by Chairman MILLS' endorsement.

One of the major goals of my congressional career has been to help achieve a substantial increase in social security benefits. More than any other group in this Nation, senior citizens have been victimized by a ruthless inflation and many are unable to live in dignity for lack of adequate income despite a life of hard, dedicated work. It is my belief that the Federal Government must make social security a genuine source of security for the elderly. Thus, shortly after joining the Congress in 1965, I introduced legislation in the House which would have increased social security benefits by 50 percent. This proposal was a companion measure to a bill introduced in the Senate by the late New York Senator, Robert F. Kennedy. Although at the time, both Senator Kennedy and I knew it would take a long, hard battle to place more money in the pockets of the elderly, we did not shrink from the challenge.

The years following the introduction of that proposal have shown the Congress unprepared to provide senior citizens with the income they need and deserve. In 1967, the Congress approved a 13.5 percent increase in benefits. While voting for the increase, I insisted that it was far from adequate. So, in 1968 and 1969, I urged adoption of an additional 35 percent increase. In the Tax Reform Act of 1969 and the Debt Ceiling Act of 1970, the Congress enacted increases totaling 25 percent. However, during those years, inflation was at its peak and the needs of our senior citizens far exceeded what the Federal Government provided. Thus, despite these increases, I remained convinced that the effect to secure adequate assistance for the elderly would have to continue. Therefore, last year, I introduced H.R. 9300, an omnibus social security proposal which is now pending before the Ways and Means Committee and which would provide, among other things, for a boost in benefits of 20 percent.

Last summer, the House adopted and sent to the Senate H.R. 1, a comprehensive bill which would enhance benefits—but only by 5 percent. While the Senate has been considering that bill for many months, support for raising this meager increase has mushroomed. With the backing now of Chairman MILLS, the chances for a truly progressive and substantial increase in benefits look brighter than ever. It is my strong hope that the Members of the Senate will realize the urgency of providing genuine security for our senior citizens and speedily enact H.R. 1 with the 20 percent increase. However, if prospects for passage of the controversial H.R. 1 in the very near future are dim, I would urge separation of the increased social security benefits provision from the rest of the bill and prompt enactment of the greater benefits. With Chairman MILLS' leadership, I am sure that the overwhelming majority of

Members of the House will vote to accept the 20-percent increase.

THE CREDIBILITY CRISIS

(Mr. STAGGERS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. STAGGERS. Mr. Speaker, my attention has been called to an address by Mr. J. L. Robertson, Vice Chairman of the Board of Governors of the Federal Reserve System, given before the Independent Bankers Association of America on March 15, 1972. Mr. Robertson's topic is "The Credibility Crisis."

This is a problem that is spreading over wide areas of our society. As Mr. Robertson rightly points out, both the political and business worlds are feeling its effects and it has become a grave problem for our communications media. Our Investigations Subcommittee in particular has been the recipient of many complaints and allegations concerning the presentation of manufactured or staged events being presented to the public under the guise of bona fide television news stories and documentaries.

I think that Mr. Robertson's remarks effectively raise some very basic issues which are in need of increasing attention and analysis. I commend it to your reading:

THE CREDIBILITY CRISIS

In searching for a subject for my remarks here, it occurred to me that since, in the formulation of monetary policy, I have been in the front lines longer than anyone else—more than two decades—I should say something about the economy, perhaps pinpointing the mistakes of the past, explaining how we got to where we are, and indicating where we go from here. But the more I thought about it, the more certain I was that that objective was not a good one. At least with respect to where we go from here, the papers are full of prognostications—some by persons whose only qualification would seem to be an academic degree. I think all I need to say to you on that subject is that, at long last, the fallacious and enervating doctrines of "gradualism" and "benign neglect" have been discarded—unfortunately, at the cost of price and wage controls—and that we are now headed in the right direction. Given time, the psychological attitudes of businessmen and consumers will change for the better. The wisdom and steadfastness with which we formulate and adhere to sound monetary and fiscal policies, while awaiting those changes in attitude, will determine not only the extent to which we succeed in reducing both inflation and unemployment, but also the time when we can safely dispense with controls.

Having given up that objective, I turned to another. I thought perhaps the Hunt Commission Report would meet my needs. But the more I read that report, the more inappropriate it seemed, because the good and bad ideas are so intertwined and knotted together that it is almost impossible to unravel them. In this political year, I am sure Congress will not be able to do so. Why should I impose on your time to discuss them now? Besides, few of you have any doubts about my views on any portion of the report. And so, again, I changed objectives.

The other day a play opened in Philadelphia called "The Selling of the President," in which the candidate is portrayed as having been born and raised in Broken Bow, Nebraska, my home town—a town about which

bankers have been hearing for as long as I have been making speeches. The play is based on the book, "The Selling of the President 1968," by Joe McGinniss. I read that book and Broken Bow was never mentioned. Why was it injected into the play? My guess is that the playwright is a banker on the side who is utilizing what he learned at your conventions to get to Broadway—or, perhaps, to enhance the credibility of his play.

Credibility is what I want to talk about today. We have heard a lot about credibility gaps in recent years. But I would put it more strongly. Our society is suffering from a credibility crisis. It affects the political world and the business world. It is a grave problem for our communications media. Our educational institutions and even our family life are touched by the growing lack of trust and confidence.

Some efforts have been made to augment credibility in the business world by enacting legislation. You in the banking business have been touched by this through the Truth in Lending Act, which has been under my wing from its inception. We are now seeing a major governmental effort to get a higher degree of truth in advertising. It must come as a great shock to many of the denizens of Madison Avenue to be confronted with demands that they both explain what they mean and provide proof when they claim that brand X is 20 per cent faster or brand Y lasts 10 per cent longer. Those percentages always remind me of Chinese economic statistics—they sound fine but you seldom know what the base is.

I do not know whether this drive for truth in advertising will ever get to the point where a certain newspaper is asked to prove that it really gives its readers "all the news that's fit to print," or whether a certain magazine will be asked to provide the statistics that will show that it really is "the world's most quoted news weekly." Probably not. One of the strange facets of the tell-the-truth campaign is that it has the enthusiastic support of most of the mass media, as long as it does not apply to them. The media agree that you bankers should be scrupulously honest in informing your customers about your interest charges. At the same time, some of them contend that "freedom of the press" gives anyone who has access to a printing press or a microphone the right to lie and deceive, even if those lies are part of an effort to incite people to perform illegal acts, such as blowing up banks.

Examples of this curious double standard are not hard to find. One government agency, the Food and Drug Administration, is willing to use the full force of the law to stop an advertiser from exaggerating the effectiveness of its mouthwash in combating cold germs. But another agency, the Federal Communications Commission, was apparently unwilling to even so much as slap the wrist of a powerful television network for showing its vast audience a baby that (according to the network) was dying of starvation, when the actual cause of death was premature birth and had nothing to do with malnutrition.

The protective mantle of the First Amendment to the Constitution has been draped around such varied activities as peddling pornography, pushing pot, and advocating arson, but it has not been extended to provide protection to those who would stretch the truth in their efforts to sell mouthwash or gasoline. Perhaps it is felt that the mendacity of Madison Avenue is a greater threat to our well being than the intellectual drivel of the pushers of drugs, debauchery, and destruction. But a consequence of our unprecedented tolerance of dissemination of destructive falsehood is the growth of the great credibility crisis that now confronts us.

We find the communications media being used to undermine the credibility of everyone who represents authority, whether it be the government official, the business leader,

the police, the school teacher, or the mere parent. In turn, the credibility of the media is called into question, and the public regards with increasing skepticism what they are told by the press and the broadcasters. An ace political correspondent of the *Washington Post* put it this way:

"The measure of the failure of the newspapers is the open skepticism and even derision with which they are viewed by their customers. The press has as big a credibility gap as any institution in this society."

A well known liberal academic, with extensive experience in high government positions, Daniel Patrick Moynihan, has voiced deep concern about the degree to which irresponsible behavior on the part of the news media is making it difficult for our government to perform its assigned tasks effectively. In an article published last year, Mr. Moynihan said:

"Hence the conditions are present for a protracted conflict in which the national government keeps losing. This might once have been a matter of little consequence or interest. It is, I believe, no longer such, for it now takes place within the context of what Nathan Glazer has described as an 'assault on the reputation of America . . . which has already succeeded in reducing this country, in the eyes of many American intellectuals, to outlaw status . . .' In other words, it is no longer a matter of this or that administration; it is becoming a matter of national morale, of a 'loss of confidence and nerve', some of whose possible consequences . . . are not pleasant to contemplate."

We can see those consequences emerging already. On the one hand, there is a growth in the number of cynics who believe nothing; on the other, we see an increase in the number of "true believers" who are guided by nothing but their own unshakable convictions. The cynics are bogged down in apathy and indecision. The true believers are fired with fanaticism, not tempered with knowledge. The ability of our people to cooperate to promote the general welfare is vastly diminished, as we find it increasingly difficult to reach agreement on what the general welfare is.

For example, virtually every country in the history of the world, including ours, has always placed high priority on maintaining its ability to defend itself against potential enemies. This priority was well stated by Adam Smith two hundred years ago when he wrote in *The Wealth of Nations*: "Defense is much more important than opulence."

When Smith wrote those words, no one enjoyed much opulence in terms of present day standards. It is shocking that in a society that has more motor cars, television sets, air conditioners, etc., etc. per capita than any country in the world, the cry is going up that we cannot afford to spend the money required to provide ourselves with an adequate defense against our potential enemies. We are told that we must reorder our priorities and that national defense must be shoved far down the list. This is not just the cry of some "lunatic fringe". It is a theme that is put forward by serious contenders for high political office. It is supported by influential newspapers and by some of the most influential voices heard on that powerful medium, network television.

I do not question their motives, but I do question their judgment, and I am shocked by some of the methods that they employ to influence public opinion. Let me cite a couple examples of the methodology.

A few months ago one of the best known TV commentators in the country told his vast audience that two-thirds of the regular tax income of this country was spent on the military. He compared this unfavorably with the old state of Prussia, which he said was criticized around the world for spending half of its income on the military. The implica-

tion was that the United States is more militaristic than Prussia was in its heyday.

The statistics used by this commentator were incorrect. In the last fiscal year, our expenditures on national defense amounted to a little over 40 per cent of the revenues of the federal government. This year it is estimated that defense expenditures will amount to less than 36 per cent of federal revenue—a far cry from the figure of two-thirds used by the television commentator. After his figures were challenged, the commentator attempted a lame justification which made little sense. He and his network refused to correct the misleading impression that was given to the estimated fifteen million people who heard the original broadcast. They refused to even acknowledge the fact that a far more valid measure of the relative defense burden carried by different countries is the ratio of defense expenditures to GNP. They have not informed their audience that in the last fiscal year the total defense expenditures of the United States amounted to just a little over 7 per cent of our GNP, the lowest this ratio has been for many years.

The commentator in question makes no bones about the fact that in his judgment the United States spends far too much on defense. He is one of those who wants to see our priorities drastically reordered. He appears to overlook the fact that it will not be Americans who reorder our priorities if we so weaken our defenses that we are unable to protect ourselves from an attack. However, he is entitled to his judgment. What he is not entitled to do, in my opinion, is to use his privileged position as a national television commentator to persuade others of the correctness of his judgment by feeding them false information.

The president of CBS News would appear to agree, because a few years ago he made this statement:

"Anybody in news who is unfair, biased or inaccurate—deliberately or negligently—despoils his journalistic heritage and demeans his profession."

That is a fine statement. Unfortunately, however, it would appear that it is not invariably heeded even in his own organization. You may recall that a year ago CBS broadcast a documentary called "The Selling of the Pentagon", which aroused great controversy. This CBS production has probably been charged with more inaccuracy and bias than any comparable television production to date. I will cite only one example, not the most important, but one which is indisputable because it involves the use of false statistics.

In introducing the theme of huge Defense Department expenditures on public affairs, CBS noted that about \$30 million a year was budgeted for such expenditures. However, it pointed out that an "unpublished" study by the prestigious Twentieth Century Fund had estimated that such expenditures might be as high as \$190 million. CBS displayed a graph showing that this was more than all three television networks combined spent on their news programs. However, investigation by the critics revealed that at the time the CBS program was aired, the study by the Twentieth Century Fund had been published and that it contained no such figure. On the contrary, it said that no accurate estimate of total Defense Department spending on public affairs could be made. Although one of the papers prepared for the study had included the \$190 million estimate, the Twentieth Century Fund had not wished to lend its prestige to a figure that it did not consider to be reliable. The Twentieth Century Fund dropped it, but CBS did not. Whether this inaccuracy was deliberate or negligent I cannot say, but to borrow the words of the CBS official I just quoted, those responsible for it demean their profession. What is sadder still

is that CBS has admitted the facts but has not to this day apologized for the inaccuracy or corrected the misinformation which it disseminated.

However, the most important criticism of this particular TV production centers on the basic veracity of the documentary.

There are those of us who think that if the taxpayer is to be asked to support a defense program that costs around \$80 billion a year, the government has a responsibility to tell him why it is necessary and what is being done with his money. CBS rejected that viewpoint so completely that it made no mention of it whatsoever in its documentary. The basic issue at the heart of this program was never debated. CBS assumed that expenditures to inform the public about the need for national defense were unnecessary and then went on to show that they were being made, implying that it was showing the public examples of illegitimate and wasteful activities. It seems safe to infer that what the producers wanted to accomplish was not the trimming of a few million dollars from the Defense Department budget to save the taxpayers money. They were clearly after bigger game. If the government could be denied the right to finance an information program to maintain public support for national defense then those such as the commentator I discussed earlier would find it much easier to win public support for really huge cuts in our national defense. The documentary clearly implied that we no longer needed to be as concerned with national defense as we once were, since we had been living in an era of peaceful coexistence for over a decade. That decade, I might note, included such events as the building of the Berlin Wall, the Cuban missile crisis, the Vietnam War, and the Soviet invasion of Czechoslovakia.

I call these matters to your attention today, rather than discussing with you banking matters or the state of our economy, because I, too, have become impressed with the importance of assigning proper priorities to our national goals. I had the privilege recently of reading the manuscript of a forthcoming book by General Lewis W. Walt, who retired last year from his post as Deputy Commandant of the Marine Corps. General Walt is not only a great soldier, but he is a most articulate and perceptive observer of the current scene.

His book bears an ominous title: "America Faces Defeat". It begins with words that everyone concerned with reordering priorities ought to think about. He says:

"Most living Americans have grown up in the most powerful nation on earth. Under the cover of that strength we have enjoyed an affluence hardly equalled in the history of any nation. This era ended in 1971. Today, we are a second-class power and we will have to accept that role for at least four years. Perhaps longer, possibly, forever."

He goes on to say:

"The individual citizen has not yet felt the impact of this basic change from strength to weakness, from leadership to compromise. Each of us will feel it as the world market for our goods and services shrinks; as we find ourselves increasingly alone within the community of nations; as we are forced to abandon the noble projects we have devised for the health, education and welfare of every living American."

"Instead, we shall have to learn once again the harsh lessons of weakness, of being trampled upon, and how it is to tighten our belts in privation and gird ourselves for nearly hopeless conflicts. We face, today, either defeat or years of national tragedy."

Those are strong words—too strong, I am sure, for those TV commentators who juggle figures to persuade the public that America is already spending far more than necessary on national defense. I will be surprised if General Walt is invited to discuss his book

and its dire warning on the popular TV talk shows. I will be surprised if our leading newspapers and magazines give it any serious attention, but not because it would be disquieting to the American people to hear such warnings. The media spokesmen are constantly telling us that they should not be blamed for conveying so much bad news to the public. They explain that if the news is bad, they have a sacred obligation to report it, and we should not conclude that they like it any more than we do. On that basis, of course, the media would not shrink from alerting the American public to the bad news that General Walt is bringing out in his forthcoming book.

My guess is that General Walt's warning will be largely ignored for the same reason that similar warnings voiced by other distinguished Americans have been ignored in recent years. The explanation lies in these words penned by David Broder of the *Washington Post*:

"Selectivity is the essence of all contemporary journalism. And selectivity implies criteria. Criteria depend on value judgments, which is a fancy word for opinions, preconceptions and prejudices."

It would be naive to suppose that the criteria for news selection employed by a TV commentator or a newspaper editor who believes that we are already spending far too much on defense would lead him to give prominent attention to the warning of General Walt.

That is why those of us who by chance are aware of such things must avail ourselves of opportunities to discuss them and to inform others. We must not permit our country to be immobilized and rendered defenseless by media manipulation.

Because of the credibility crisis, the average citizen is hard-pressed to know who and what is to be believed. I am prepared to admit that I am no expert on military matters. Perhaps experts such as General Walt who voice these disturbing warnings are wrong. But if we follow their advice and keep our defenses stronger than might really be necessary, what have we lost? Nothing more than a slight retardation in the expansion of what is the highest level of living the world has ever known. If, on the other hand, we follow the advice of those who say that a strong defense is not necessary and it develops that they are wrong, what will we lose? Our lives, our freedom, our country. I have no difficulty in choosing the side on which I would rather err.

I make no apology for appearing before you today to talk about matters that are not related to banking. We are Americans first and bankers second. When our country is in danger, we ask our sons to interrupt their studies and careers, to shoulder arms and give their lives if necessary to defend us. It behooves all of us who have passed that age and who have risen to positions of leadership in our communities and our profession to take whatever steps we can to insure that our country remains strong; that we not slip into war or—worse—into surrender from weakness.

The likelihood that the national news media will continue to ignore the warnings of experts in this field may create the impression that what I have said to you today is a minority view of doubtful validity. In my view, that would be a false impression, flowing from what Theodore H. White has described as the increasing concentration in fewer hands of the cultural pattern of the United States. Mr. White has said: "You can take a compass with a one-mile radius and put it down at the corner of 5th Avenue and 51st Street in Manhattan and you have control of 95 per cent of the entire opinion-and-influence making in the United States."

That explains, perhaps, why we get the monotonous sameness of opinion from our national news media, much of it very much

at odds with the deeply held views of what I believe to be the great majority of American people. There is no acceptance of the idea that those encompassed by Mr. White's circle ought to reflect the views of the people. One of the most prominent TV commentators reacted to such a notion by saying:

"More responsive to the public. What are they talking about? . . . I'm not about to adjust the work I do according to the waves of popular feeling that may come over the country. No responsible person can do that."

That surely means that the voices of the people must more frequently be heard in contradiction of the waves of feeling that emanate from that tiny group of men in Manhattan that make up, according to Mr. White, 95 percent of the opinion-and-influence making in the United States.

Let no man be deterred. It has been said that it is easier to find a score of men wise enough to discover the truth than to find one man intrepid enough, in the face of opposition, to stand up for it. Perhaps that one takes his counsel from Daniel De Foe, who said: "He that has truth on his side is a fool, as well as a coward, if he is afraid to own it because of other men's opinions."

DISASTER AT BUFFALO CREEK

(Mr. HECHLER of West Virginia asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HECHLER of West Virginia. Mr. Speaker, on February 26, 1972, a coal refuse retaining "dam" located on the property of the Buffalo Mining Co. failed and released millions of gallons of water and tons of refuse, resulting in some 150 persons dead or missing, and extensive property damage, including loss of homes and family possessions.

The Interior Department recently reported that the dam in question was constructed by the coal company to retain mine waste waters—often referred to as "blackwater"—which result from the daily mine operations. The State of West Virginia would not allow the company to discharge the water into nearby Buffalo Creek, because the mine water was polluted.

Instead of developing an effective treatment system, the coal operator sought the cheapest means of meeting the State requirement. The operator constructed a dam to retain the polluted water. But, as Interior found, this dam was not constructed to retain safely "large volumes of water over any lengthy period of time. Dams of the type that failed helped meet State water pollution control requirements, but their structural stability in terms of holding impounded water was deficient in several respects. In short, dam construction standards and controls should have been taken into account more fully in the design of the dam to meet clean water requirements."

But the Interior Department's report misses one important point—dams, whether well-constructed or not, are not an adequate substitute for treating mine waste water.

Even water impounded behind a well-constructed dam must regularly be released to avoid overflow or another disaster. If the polluted water is released without treatment, it will degrade our waterways.

Today, there are many so-called retaining dams in West Virginia and in other States which are used by coal operators to trap mine waste water. In West Virginia, the Governor has ordered the water released in many of them. But in time, if this situation is allowed to continue, these impoundments will refill again.

We must avoid this. Such dams are a hazard from both a safety and pollution control standpoint.

In a few days, there will come to the House floor H.R. 11896, as reported by the House Public Works Committee on March 11, 1972—the Federal Water Pollution Control Act Amendments of 1972.

That bill contains several fine provisions relating to the construction of waste treatment systems and water pollution control research. But it also is, in many respects, far weaker than the bill (S. 2770) which passed the Senate last November by a vote of 86 to 0.

I have joined our colleagues, Representatives DINGELL and REUSS and over 30 other colleagues in cosponsoring the "Clean Water Package of Amendments" which will bring H.R. 11896 closer to the stronger Senate bill.

At that time, I will also offer an amendment to provide that the Administrator of the Environmental Protection Agency publish, within 6 months after enactment, regulations for the effective treatment of mine water wastes that result from underground mining operations. Thus, for example, where an underground mine uses an impoundment to treat mine water wastes and regularly or occasionally discharges the water behind the impoundment, these regulations would establish guidelines for the treatment of those wastes by means other than impoundments. Where impoundments are permitted, the regulations will establish requirements for their construction and operation.

I urge my colleagues to join me in support of my amendment to H.R. 11896.

We cannot afford, in West Virginia or elsewhere, another tragedy like that which occurred at Buffalo Creek last month. We should not let the coal operators of this Nation establish, under the guise of complying with antipollution laws, unsafe conditions that threaten lives. These operators should be required to install effective treatment systems that insure safety to people and prevent pollution of our waterways.

The text of my amendment to H.R. 11896 as follows:

AMENDMENT TO TITLE III OF H.R. 11896, AS REPORTED

(Proposed by Mr. HECHLER of West Virginia)

Page 291, between lines 11 and 12, insert the following:

"(b) The Administrator, after consultation with appropriate Federal and States agencies and other interested persons, shall publish within six months after the date of enactment of this title (and from time to time thereafter) regulations for the effective treatment, including, where appropriate, the safe storage for treatment purposes of mine water wastes resulting from new or currently operating underground mines. Effluent limitations for point sources established by this title shall, where applicable, be in accord with such regulations. Upon promulgation such regula-

tions would be subject to the enforcement provisions of section 309(a) of this title."

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. KYROS for Wednesday, March 23, 1972, on account of official business.

Mr. BARING (at the request of Mr. TIERNAN), for Thursday, March 23, through March 29, 1972, on account of official business.

Mr. HALPERN (at the request of Mr. GERALD R. FORD), for today, and the balance of the week, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. STEIGER of Wisconsin, for 60 minutes, on March 29, and to revise and extend his remarks and include extraneous matter.

Mr. SMITH of Iowa, for 30 minutes, today, and to revise and extend his remarks and include extraneous matter.

Mr. ASPINALL, for 30 minutes, on March 28, and to revise and extend his remarks and include extraneous matter.

(The following Members (at the request of Mr. LANDGREBE) to revise and extend their remarks and include extraneous material:)

Mr. HOGAN, for 5 minutes, today.

Mr. KEMP, for 15 minutes, today.

Mr. BLACKBURN, for 10 minutes, today.

Mr. BURKE of Florida, for 15 minutes, today.

Mr. CRANE, for 5 minutes, today.

Mr. HEINZ, for 15 minutes, today.

(The following Members (at the request of Mr. CLAY) to address the House and to revise and extend their remarks and include extraneous matter:)

Mr. GONZALEZ, for 10 minutes, today.

Mr. REUSS, for 30 minutes, today.

Mr. DRINAN, for 10 minutes, today.

Mr. REUSS, for 60 minutes, on March 23.

Mr. FULTON, for 5 minutes, today.

Mr. GRIFFIN, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. EDMONDSON and to include extraneous matter in three instances.

Mr. ROONEY of New York, and to include extraneous material.

All Members to have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the special orders given by the gentleman from Florida, Mr. GIBBONS, and the gentleman from Iowa, Mr. SMITH.

(The following Members (at the request of Mr. LANDGREBE) and to include extraneous matter):

Mr. BELL in two instances.

Mr. SPRINGER in two instances.

Mr. KEMP.

Mr. WHALEN.

Mr. SHRIVER in two instances.

Mr. WYMAN in two instances.
Mr. DERWINSKI in three instances.
Mr. ARCHER.
Mr. ASHBROOK in three instances.
Mr. MCKINNEY.
Mr. MCCLURE.
Mr. FRENZEL.
Mr. THOMSON of Wisconsin.
Mr. BRAY in two instances.
Mr. SCHWENGEL.
Mr. GOLDWATER in two instances.
Mr. PRICE of Texas.
Mrs. DWYER in three instances.
Mr. BROWN of Michigan.
Mr. HOSMER in two instances.
Mr. MINSHALL in two instances.
Mr. KEITH.
Mr. TERRY.

(The following Members (at the request of Mr. CLAY) and to include extraneous matter:)

Mr. BADILLO in three instances.
Mr. GONZALEZ in three instances.
Mr. HAGAN in five instances.
Mr. BIAGGI in 10 instances.
Mr. CARNEY.
Mr. ASPIN in 10 instances.
Mr. WOLFF.
Mr. DIGGS.
Mr. PICKLE in six instances.
Mr. ADDABBO.
Mr. STEPHENS.
Mr. HANNA in two instances.
Mr. WILLIAM D. FORD in two instances.
Mr. RARICK in three instances.
Mr. ANDERSON of California in two instances.
Mr. PURCELL.
Mr. BEGICH.
Mr. BRASCO in two instances.
Mr. GRAY in two instances.
Mr. BINGHAM in two instances.
Mr. KLUCZYNSKI in two instances.
Mr. FOUNTAIN in two instances.
Mr. GREEN of Pennsylvania in two instances.
Mr. DRINAN in two instances.
Mrs. MINK in three instances.
Mr. SYMINGTON in two instances.
Mr. GRIFFIN.
Mr. MONAGAN.
Mr. FAUNTROY in five instances.
Mr. MILLER of California in five instances.
Mr. RYAN in three instances.
Mr. ROY in two instances.
Mr. SCHEUER in four instances.

SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 764. An act to authorize the disposal of lead from the national stockpile and the supplemental stockpile; to the Committee on Armed Services.

S. 773. An act to authorize the disposal of metallurgical grade chromite from the national stockpile and the supplemental stockpile; to the Committee on Armed Services.

S. 1379. An act to authorize the Secretary of Agriculture to establish a volunteers in the national forests program and for other purposes; to the Committee on Agriculture.

S. 3086. An act to authorize the disposal of nickel from the national stockpile; to the Committee on Armed Services.

S. Con. Res. 55. Concurrent resolution providing for the recognition of Bangladesh; to the Committee on Foreign Affairs.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 904. An act to amend the Uniform Time Act to allow an option in the adoption of advanced time in certain cases; and

S. 3160. An act to provide for a modification in the par value of the dollar, and for other purposes.

ADJOURNMENT

Mr. CLAY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 50 minutes p.m.), the House adjourned until tomorrow, Thursday, March 23, 1972, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1765. A letter from the Director, Office of Management and Budget Executive Office of the President, transmitting a report that various appropriations listed therein have been apportioned on a basis which indicates a necessity for supplemental estimates of appropriations, in order to permit payment of pay increases, pursuant to 31 U.S.C. 665; to the Committee on Appropriations.

1766. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report showing the total amount of assistance-related funds obligated in, for, or on behalf of Cambodia during the 6 months ended December 31, 1971, pursuant to section 655(f) of the Foreign Assistance Act of 1971; to the Committee on Foreign Affairs.

RECEIVED FROM THE COMPTROLLER GENERAL

1767. A letter from the Comptroller General of the United States, transmitting a report on improvement needed in manpower training at the Boston Skills Center under the program administered by the Department of Labor and the Department of Health, Education, and Welfare; to the Committee on Government Operations.

1768. A letter from the Comptroller General of the United States, transmitting a report on how the Department of Defense improved the use of cargo space on ammunition ships by better planning; to the Committee on Government Operations.

1769. A letter from the Comptroller General of the United States, transmitting a report that more effective use of program resources could be made by the Economic Development Administration of the Department of Commerce, to alleviate unemployment; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. POAGE: Committee on Agriculture. H.R. 9876. A bill to authorize the conveyance of certain lands of the United States to the State of Tennessee for the use of the University of Tennessee; with an amendment (Rept. No. 92-939). Referred to the Committee of the Whole House on the State of Union.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 13591. A bill to

amend the Public Health Service Act to designate the National Institute of Arthritis and Metabolic Diseases as the National Institute of Arthritis, Metabolism, and Digestive Diseases, and for other purposes (Rept. No. 92-940). Referred to the Committee of the Whole House on the State of the Union.

Mr. EDWARDS of California: Committee on the Judiciary. S. 2713. An act to amend title 18 of the United States Code to authorize the Attorney General to provide care for narcotic addicts who are placed on probation, released on parole, or mandatorily released (Rept. No. 92-941). Referred to the Committee of the Whole House on the State of the Union.

Mr. EDWARDS of California: Committee on the Judiciary. H.R. 9135. A bill to amend the act of August 19, 1964, to remove the limitation on the maximum number of members of the board of trustees of the Pacific Tropical Botanical Garden (Rept. No. 92-942). Referred to the Committee of the Whole House on the State of the Union.

Mr. EVINS of Tennessee: Select Committee on Small Business. Report on the impact of Federal installations on Small Business (Rept. No. 92-943). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARCHER (for himself, Mr. ABBITT, Mr. FISHER, Mr. GOODLING, Mr. STEIGER of Arizona, and Mr. WINN):

H.R. 13998. A bill to repeal the Davis-Bacon Act and the Contract Work Hours Standards Act, and related provisions of law; to the Committee on Education and Labor.

By Mr. ASPIN (for himself and Mr. MCKINNEY):

H.R. 13999. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize design standards for schoolbuses, to require certain standards be established for schoolbuses, to require the investigation of certain schoolbus accidents, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BADILLO (for himself, Mr. ADDABO, Mr. BINGHAM, Mr. COLLINS of Illinois, Mr. CONYERS, Mr. CORMAN, Mr. DELLUMS, Mr. DOW, Mr. EDWARDS of California, Mr. HALPERN, Mr. HARRINGTON, Mr. HATHAWAY, Mrs. HICKS of Massachusetts, Mr. KASTENMEIER, Mr. KOCH, Mr. MIKVA, Mr. MOORHEAD, Mr. RANGEL, Mr. ROSENTHAL, Mr. RYAN, Mr. SEIBERLING, Mr. STOKES, and Mr. SYMINGTON):

H.R. 14000. A bill to establish comprehensive and developmental child care services in the Department of Health, Education, and Welfare; to the Committee on Education and Labor.

By Mr. BIAGGI (for himself and Mr. FEYSER):

H.R. 14001. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several States, and for other purposes; to the Committee on the Judiciary.

By Mr. BINGHAM (for himself and Mr. WALDIE):

H.R. 14002. A bill to authorize the Secretary of State to furnish assistance for the resettlement of Soviet Jewish refugees in Israel; to the Committee on Foreign Affairs.

By Mr. BINGHAM (for himself and Mr. ANDERSON of Tennessee):

H.R. 14003. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for the registration and licensing of food manu-

facturers and processors, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BINGHAM (for himself and Mr. KOCH):

H.R. 14004. A bill to provide Federal citizen anticrime patrol assistance grant to residents' organizations; to the Committee on the Judiciary.

By Mr. BRINKLEY:

H.R. 14005. A bill to authorize a Coast Guard appropriation for alteration of bridges over the navigable waters; to the Committee on Merchant Marine and Fisheries.

By Mr. CORMAN:

H.R. 14006. A bill to grant full credit for military service in the computation of railroad retirement annuities for disability in the case of persons also eligible for pension, compensation, or other benefits as a result of such service; to the Committee on Interstate and Foreign Commerce.

By Mr. CORMAN (for himself and Mr. GOLDWATER):

H.R. 14007. A bill to amend the Disaster Relief Act of 1970 to authorize cancellation of 25 percent of the principal of certain loans; to the Committee on Public Works.

By Mr. COUGHLIN:

H.R. 14008. A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. DENHOLM:

H.R. 14009. A bill to declare that certain federally owned land is held by the United States in trust for the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation in North and South Dakota; to the Committee on Interior and Insular Affairs.

H.R. 14010. A bill to amend section 130 of title 23 of the United States Code to provide for the illumination of certain railway-highway crossings; to the Committee on Public Works.

By Mr. DUNCAN:

H.R. 14011. A bill to amend the Occupational Safety and Health Act of 1970, and for other purposes; to the Committee on Education and Labor.

H.R. 14012. A bill to amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act to revise the eligibility conditions for annuities, to change the railroad retirement tax rates, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 14013. A bill to amend the Internal Revenue Code of 1954 to allow a credit against the individual income tax for tuition paid for the elementary or secondary education of dependents; to the Committee on Ways and Means.

By Mr. FISH:

H.R. 14014. A bill to amend the Federal Aviation Act of 1958 to prohibit the expenditure of Federal funds for certain airport development projects unless the Secretary of Transportation certifies that there has been afforded the opportunity for public hearings to consider the economic, social, and environmental effects of such development and its consistency with local planning, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. FOLEY (for himself, Mr. LEGGETT, Mr. McFALL, Mr. JOHNSON of California, Mr. MCCORMACK, and Mr. MOSS):

H.R. 14015. A bill to amend section 2(3), section 8c(2), section 8c(6)(I), and section 8c(7)(C) of the Agricultural Marketing Agreement Act of 1937, as amended; to the Committee on Agriculture.

By Mr. GIAIMO (for himself and Mrs. GRASSO):

H.R. 14016. A bill to amend the public Health Service Act to provide for the prevention of Cooley's anemia; to the Committee on Interstate and Foreign Commerce.

By Mrs. GRASSO:

H.R. 14017. A bill to amend title 18 of the United States Code to permit the mailing of lottery tickets and related matter, the broadcasting or televising of lottery information, and the transportation and advertising of lottery tickets in interstate commerce, but only where the lottery is conducted by a State agency; to the Committee on the Judiciary.

H.R. 14018. A bill to amend title 39 of the United States Code to exempt certain newspaper advertisements of lotteries which are legal under applicable State law, or sponsored by a State, from the list of nonmailable matter; to the Committee on Post Office and Civil Service.

By Mr. GROVER:

H.R. 14019. A bill to establish a contiguous fishery zone (to the outer limits of the Continental Shelf) beyond the territorial sea of the United States; to the Committee on Merchant Marine and Fisheries.

By Mr. GUDE:

H.R. 14020. A bill to establish the Potomac National River in the States of Maryland, Virginia, West Virginia, and the District of Columbia, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. KASTENMEIER (for himself and Mr. RAILSBACK):

H.R. 14021. A bill to amend the Trademark Act to extend the time for filing oppositions, to eliminate the requirement for filing reasons of appeal in the Patent Office, and to provide for awarding attorney fees; to the Committee on the Judiciary.

By Mr. KOCH (for himself, Mr. ANDERSON of Tennessee, Mr. EILBERG, Mr. ASPIN, Mr. CORDOVA, Mr. DONOHUE, Mr. GALLAGHER, Mr. GREEN of Pennsylvania, Mr. HELSTOSKI, and Mr. RANGEL):

H.R. 14022. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide for grants to cities for improved street lighting; to the Committee on the Judiciary.

By Mr. LENT:

H.R. 14023. A bill to amend the Social Security Act to provide for medical and hospital care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities; to the Committee on Ways and Means.

By Mr. McFALL (for himself, Mr. PERKINS, Mr. McDADE, and Mr. ZABLOCKI):

H.R. 14024. A bill to amend the Public Works and Economic Development Act of 1965 in order to increase the authorization of appropriations for the fiscal year ending June 30, 1973, for public works and development facilities grants, and to require that a larger percentage of such appropriations be expended in certain redevelopment areas; to the Committee on Public Works.

By Mr. MOLLOHAN:

H.R. 14025. A bill to amend the Federal Coal Mine Health and Safety Act of 1969 to provide protection from impoundments of water used in connection with the operation of coal mines; to the Committee on Education and Labor.

By Mr. PIKE:

H.R. 14026. A bill to amend the act entitled "An act to establish a contiguous fishery zone beyond the territorial sea of the United States," approved October 14, 1966; to the Committee on Merchant Marine and Fisheries.

By Mr. RODINO:

H.R. 14027. A bill to amend the Internal Revenue Code of 1954 to raise needed additional revenues by tax reform; to the Committee on Ways and Means.

By Mr. SHIPLEY:

H.R. 14028. A bill to support the price of milk at 90 percent of the parity price for the period beginning April 1, 1972, and ending March 31, 1973; to the Committee on Agriculture.

By Mr. SKUBITZ (for himself, Mr. SAYLOR, Mr. UDALL, Mr. STEIGER of Arizona, Mr. LLOYD, and Mr. McKay):

H.R. 14029. A bill to authorize the Secretary of the Interior to transfer franchise fees received from certain concession operations at Glen Canyon Recreation Area, Ariz., and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. STAGGERS:

H.R. 14030. A bill to amend the Public Health Service Act to extend for 3 years the authorization for grants for communicable disease control and vaccination assistance; to the Committee on Interstate and Foreign Commerce.

H.R. 14031. A bill to provide increases in railroad retirement benefits comparable to those provided by the Social Security Amendments of 1972; to the Committee on Interstate and Foreign Commerce.

By Mr. THONE (for himself, Mr. CLEVELAND, Mr. COLLINS of Texas, Mr. DENNIS, Mr. GRIFFIN, Mr. MELCHER, and Mr. SCHMITZ):

H.R. 14032. A bill to amend the Occupational Safety and Health Act of 1970, and for other purposes; to the Committee on Education and Labor.

By Mr. VANIK:

H.R. 14033. A bill to amend the Civil Rights Act of 1964 in order to make discrimination because of physical or mental handicap in employment an unlawful employment practice, unless there is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; to the Committee on Education and Labor.

By Mr. VANIK (for himself, Mr. ROSENTHAL, Mr. BADILLO, Mr. BIAGGI, Mr. CLARK, Mr. DELLUMS, Mr. EILBERG, Mr. FRASER, Mr. GIBBONS, Mr. HALPERN, Mr. HOSMER, Mr. KOCH, Mr. PODELL, Mr. RODINO, and Mr. CHARLES H. WILSON):

H.R. 14034. A bill to repeal the meat quota provisions of Public Law 88-482; to the Committee on Ways and Means.

By Mr. WHALEN (for himself, Mrs. DWYER, Mr. KYROS, Mr. KASTENMEIER, Mr. BURKE of Massachusetts, and Mr. HICKS of Washington):

H.R. 14035. A bill to authorize the President, through the temporary Vietnam Children's Care Agency, to enter into arrangements with the Government of South Vietnam to provide assistance in improving the welfare of children in South Vietnam and to facilitate the adoption of orphaned or abandoned Vietnamese children, particularly children of U.S. fathers; to the Committee on Foreign Affairs.

By Mr. BEGICH:

H.R. 14036. A bill to restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes; to the Committee on House Administration.

By Mr. DORN:

H.R. 14037. A bill to amend the Tariff Schedules of the United States to provide for the duty-free entry of mica films; to the Committee on Ways and Means.

By Mr. GUDE (for himself, Mr. HOGAN, and Mr. BROXHILL of Virginia):

H.R. 14038. A bill to facilitate the resolution of medical malpractice suits in the District of Columbia; to the Committee on the District of Columbia.

By Mrs. HICKS of Massachusetts:

H.R. 14039. A bill to permit collective negotiation by professional retail pharmacists with third-party prepared prescription program administrators and sponsors; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. CEDERBERG, Mr. GERALD R. FORD, and Mr. PUPPE):

H.R. 14040. A bill to promote development and expansion of community schools throughout the United States; to the Committee on Education and Labor.

By Mr. SCOTT:

H.R. 14041. A bill to provide a startup tax adjustment program for small business and for persons engaged in small business; to the Committee on Ways and Means.

By Mr. MANN:

H.J. Res. 1126. Joint resolution to pay tribute to law enforcement officers of this country on Law Day, May 1, 1972; to the Committee on the Judiciary.

By Mr. McDADE:

H. Con. Res. 570. Concurrent resolution: The Northern Ireland Resolution; to the Committee on Foreign Affairs.

By Mr. PERKINS (for himself, Mrs. GREEN of Oregon, Mr. THOMPSON of New Jersey, Mr. DENT, Mr. PUCINSKI, Mr. DANIELS of New Jersey, Mr. BRADEMANS, Mr. O'HARA, Mr. HAWKINS, Mr. WILLIAM D. FORD, Mrs. MINK, Mr. SCHEUER, Mr. MEEDS, Mr. GAYDOS, Mr. CLAY, Mrs. CHISHOLM, Mr. BIAGGI, Mrs. GRASSO, Mrs. HICKS of Massachusetts, Mr. MAZZOLI, Mr. BADILLO, and Mr. REID):

H. Res. 905. Resolution urging supplemental appropriations to implement the President's message of March 17, 1972, calling for equal educational opportunities; to the Committee on Education and Labor.

By Mr. BADILLO:

H. Res. 906. Resolution calling for an increase in appropriations for title I of the Elementary and Secondary Education Act; to the Committee on Education and Labor.

By Mr. THOMPSON of New Jersey:

H. Res. 907. Resolution providing funds for the expenses of the investigations and studies

authorized by House Resolution 819; to the Committee on House Administration.

H. Res. 908. Resolution providing expenses for the Committee on Interstate and Foreign Commerce; to the Committee on House Administration.

H. Res. 909. Resolution to provide funds for the further expenses of the investigation and study authorized by House Resolution 20; to the Committee on House Administration.

H. Res. 910. Resolution providing for the expenses of the House Select Committee on Crime; to the Committee on House Administration.

H. Res. 911. Resolution to provide funds for the expenses of the investigations and studies authorized by rule XI(8) and House Resolution 304; to the Committee on House Administration.

H. Res. 912. Resolution to provide for the further expenses of the investigation and study authorized by House Resolution 201 for the Committee on Armed Services; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII,

342. The SPEAKER presented a memorial of the Senate of the State of Hawaii, relative to the recent report of the Commission on Population Growth and the American Future, which was referred to the Committee on Government Operations.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BURTON:

H.R. 14042. A bill for the relief of Jose Carlos Recalde Martorella; to the Committee on the Judiciary.

By Mr. DUNCAN:

H.R. 14043. A bill for the relief of Lt. Col. Horace Hill, U.S. Air Force Reserve (retired); to the Committee on the Judiciary.

By Mr. KEMP:

H.R. 14044. A bill for the relief of Richard Burton, SFC, U.S. Army (retired); to the Committee on the Judiciary.

By Mr. PODELL:

H.R. 14045. A bill for the relief of Tino Cattabiani, his wife, Caterina Cattabiani, and their minor son, Pier Maria Cattabiani; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

203. The SPEAKER presented a petition of the City Council, Alexandria, Va., relative to placing the Liberty Bell on tour of the 50 States, which was referred to the Committee on Interior and Insular Affairs.

EXTENSIONS OF REMARKS

THE NEW OCCUPATIONAL SAFETY AND HEALTH ACT

HON. WILLIAM L. HUNGATE

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HUNGATE. Mr. Speaker, there is considerable interest in possible revision of the Occupational Safety and Health Act of 1970, and I thought this recent analysis in the "American Bar Association

Journal" of March 1972 should be helpful:

THE NEW OCCUPATIONAL SAFETY AND HEALTH ACT

(By William B. Spann, Jr.)

After extensive committee hearings and floor debate, the Occupational Safety and Health Act of 1970 was passed by Congress in December of 1970 and signed into law by the President as Public Law 91-596. The effective date of the act was April 28, 1971. Standards were promulgated on May 29, effective August 27; thus, aggressive enforcement of the act began on that date. With

several exceptions, the act applies to all employment throughout the states and possessions. It is expected that it will apply to more than 4.1 million businesses and 57 million employees.

Legislation of the application of this breadth deserves, indeed demands, the study and attention of lawyers, for there are few practitioners who will not have occasion to give advice that should take this act into account. Ignorance of the application and provisions of the act could be disastrous. The act has teeth; its penalties are severe; criminal sanctions are provided, including imprisonment if a death occurs; and no one

would want to advise a calculated risk under the act.

THERE ARE THREE BASIC ELEMENTS OF THE ACT

The act contains three basic elements: (1) the issuance of occupational safety and health standards by the Department of Labor; (2) provisions for federal enforcement of these standards; with (3) effective and in some cases severe sanctions or penalties when violations occur. Its primary purpose as defined in Section 5 of the act is that each employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm . . .".

The heart of the act insofar as the need for legal advice is concerned is Sections 8 through 13 and Section 17, which deal with inspections and investigations, the issuance of citations, procedures for enforcement, judicial review and penalties. In the various steps entailed in the issuance of citations and notices and the procedures for enforcement, arbitrary and rather short time limits are established: While it is too soon to have authoritative court interpretations of those limitations, we may assume that they will receive the same strict construction the courts have applied to other acts protecting employees. A company that wants to protect itself under the act must do so within the confines of the act or not at all.

ACT IS A VALID EXERCISE OF POLICE POWER

Under the present status of the law, the act will be upheld under the commerce clause as a valid exercise of the police power for the protection of the health and welfare of the public. While the enforcement proceedings appear to be somewhat harsh and almost summary in nature, they do afford due process. I would expect any contest over constitutionality to fail.

Section 8 deals with inspections, investigations and record keeping. It provides that an agent of the Secretary of Labor may enter, without delay and at reasonable times, any establishment, construction site or other area where work is performed. The agent is required to present appropriate credentials, to the owner, operator or agent in charge, but inspection cannot be avoided by hiding out or by being indefinitely out of the city. In the Congressional debates, it was suggested that if after a reasonable time no one shows up admitting to be the agent in charge, the inspector may regard any employee as the agent in charge for the purpose of presenting his credentials. No advance notice of inspection will be given, and, indeed, Section 17(f) of the act provides that any person giving advance notice without authority from the secretary or his designees may be punished by a fine of not more than \$1,000 or imprisonment of not more than six months, or both.

EMPLOYER MUST KEEP ACCIDENT AND ILLNESS RECORDS

Section 8 also gives to the secretary subpoena power over a witness for the production of evidence enforceable in the United States district courts and requires certain accident and illness records to be kept by the employer.

During the inspection a representative of the employer and a representative authorized by the employees must be given an opportunity to accompany the inspector, and if there is no authorized employee representative, the inspector may consult with a reasonable number of employees. The inspector may also question privately any employer, owner, operator, agent or employee.

Inspection may also be requested by employees or employees' representatives by giving written notice to the secretary or his authorized representative of the claimed violation or danger. A copy of this notice is

required to be provided to the employer at the time of inspection, but the names of those giving the notice may, upon their request, be eliminated. Upon receipt of this notice, the secretary must determine whether reasonable grounds exist to make a special inspection and, if he determines there are no reasonable grounds, he must advise the employees or their representative in writing of this determination. There are also procedures for employees to give written notice of alleged violations while an inspection is going on.

Section 9 deals with the issuance of citations. If, as a result of the inspection, the secretary's representative believes that an employer has violated the provisions of the act, he must issue with reasonable promptness a written citation setting forth the nature of the violation, including a reference to the provision of the act, standard, rule, regulation or order alleged to have been violated. In addition, this section fixes a reasonable time for abatement of the violation and provides that a notice in lieu of citation may be issued for *de minimis* violations. The report of the conference committee of Congress suggests that reasonable promptness for issuance is not more than seventy-two hours from the time the violation is detected (Conference Report 91-1765). It is required that the citation be posted prominently by the employer at or near each place of violation, and the failure to do so is subject to a civil penalty of \$1,000 for each violation.

CITATIONS NOT CONTESTED ARE NOT SUBJECT TO REVIEW

Section 10 sets forth the procedure for enforcement. If a citation issues under Section 9(a), the secretary within a reasonable time after termination of the inspection or investigation must notify the employer by certified mail of the penalty, if any, proposed under Section 17, and the employer has only fifteen working days from receipt of the notice to notify the secretary that he intends to contest the citation or proposed assessment of penalty. Under Section 10 (c), any employee or representative of employees may within fifteen working days of the issuance of the citation contest the time allowed for the abatement of the citation as unreasonable. If the employer fails to give notice of an intention to contest within fifteen working days of the receipt of the notice of the penalty or the employees fail to give notice within fifteen days of the citation contesting the time allowed for abatement, "the citation and assessment as proposed shall be deemed the final order of the [Occupational Safety and Health Review] Commission [established by Section 12 of the act] and not subject to review by any court or agency".

If an employer contests a citation or penalty in good faith, the time permitted by the secretary for abatement does not begin to run until the entry of a final order by the commission. If the citation is not complied with within the period for correction allowed, the employer then is notified of the penalty for failure to comply, and he has fifteen days to contest this proposed penalty.

It should be made clear that there are two penalties. Upon the issuance of a citation, a penalty is involved and the penalty as proposed is enforced in some amount even though the violation is corrected within the time allowed. More about the nature of this penalty later. If the violation is not corrected within the time allowed, a second and more severe penalty is assessed. Under the act, the violation when cited incurs a penalty, the theory being that the employer himself should maintain safety standards without the necessity of an inspection.

In case of any contest, the secretary must immediately advise the commission, which consists of three members appointed by the President by and with the consent of the

Senate. The commission affords the opportunity for a hearing, following which the commission, based on findings of fact, issues an order affirming, modifying or vacating the secretary's citation or proposed penalty or directing other appropriate relief. This order becomes final thirty days after its issuance. Rules of procedure before the review commission have been issued, but are too detailed and complex for explanation here.

PROVISION FOR JUDICIAL REVIEWS IS LIMITED

Judicial review is provided by Section 11 of the act for any person adversely affected or aggrieved by an order of the commission. The parties seeking review must file a petition in the United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, within sixty days following the issuance of the commission's order. The court has authority to grant temporary relief or a restraining order and has power to enter, upon the pleadings, testimony and proceeding in the record, a decree modifying, affirming or setting aside the order of the commission and enforcing it to the extent that the order is affirmed or modified.

The provision for judicial review is sharply limited. No objection which has not been urged before the commission can be considered by the court unless the failure or neglect to do so is excused because of extraordinary circumstances, and the act provides that the findings of the commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. This writes into the act the rule with regard to the findings of fact by the National Labor Relations Board of *Universal Camera v. National Labor Relations Board*, 340 U.S. 474 (1951). It is provided, moreover, that the commencement of the proceedings in the circuit court do not operate as a stay of the order of the commission unless the court expressly so orders.

It appears that the judicial review provided will furnish very little relief to employers from an order by the commission. Even if a party can establish the need for additional evidence before the court, the court must return the case to the commission to take this evidence and make it a part of the record, and the commission may then modify its own findings or make new findings. The substantial evidence rule would apply to any further review by the court after the additional hearing before the commission.

Section 11(b) gives a right to the secretary also to obtain review of a final order of the commission by filing in the circuit court and, if no petition for review is filed with a court of appeals within sixty days of the commission's order, the commission's findings of fact and order are conclusive in connection with any petition for enforcement filed after the expiration of the sixty-day period. When the secretary files with the circuit court for enforcement, the clerk of the court, unless otherwise ordered by the court, enters as a matter of routine a decree enforcing the order, thus permitting contempt proceedings before the court to implement enforcement. In these enforcement proceedings the court of appeals may assess all of the penalties provided in Section 17 of the act in addition to invoking any other remedies available to it.

WHEN EMPLOYEES CAN BRING AN ACTION

Section 11(c) provides protection against discharge or discrimination to any employee who files a complaint. Should an employee complain to the secretary of this action against him within thirty days of the alleged violation, and if the secretary determines

that a violation has occurred, he may bring an action in a United States district court for all appropriate relief for the employees, including rehiring or reinstatement with back pay.

The commission's principal office is located in the District of Columbia, but it may hold hearings or conduct proceedings at any other place. The chairman of the commission is authorized to appoint hearing officers, and the report of the hearing officer becomes a final order of the commission within thirty days after he reports unless a member of the commission directs that the report be reviewed by the commission. Thus, there is no certain right of review of the hearing officer's findings by the commission and, under the substantial evidence rule applicable to court review, the hearing officer's findings of fact frequently will be the ultimate findings.

Section 13 provides for a special procedure that gives the United States district courts jurisdiction on petition of the secretary to restrain any conditions or practices that are found to be such that a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the danger can be eliminated through the routine enforcement procedures. The district court may, on the filing of this petition, grant a temporary restraining order immediately, but this can be effective for no longer than five days. A hearing must be set within that period if an ex parte restraining order is granted.

HOW EXISTENCE OF IMMINENT DANGER IS DETERMINED

Section 13(c) places determination in the individual inspector as to whether imminent danger exists. The inspector is required immediately to inform the affected employees and employers of the danger and that he is recommending to the secretary that relief be sought. Section 13(d) provides that if the secretary arbitrarily or capriciously fails to seek relief, any employee who may be injured by reason of this failure or the employee's representative may bring an action against the secretary for a writ of mandamus to compel him to seek such an order. Translating the language of the act to plain parlance, this means simply that if an inspector advises an employer that an imminent danger exists which may cause death or serious physical harm and that he is recommending that a temporary injunction be sought by the secretary, the secretary can be expected to act almost immediately to obtain a restraining order that would shut down the entire operation or that portion of it which threatens death or serious physical harm. This section has not been used yet, and it is anticipated that its use will be rare.

A recapitulation of the penalties in Section 17 is in order. Subsection (a) provides that any employer who willfully or repeatedly violates the act or any court rule or order promulgated or regulations prescribed, may be assessed a civil penalty of not more than \$10,000 for each violation.

Subsection (b) provides that any employer who has received a citation for a serious violation shall be assessed a civil penalty of up to \$1,000 for each violation, and Subsection (c) that if the employer is cited for a violation not deemed to be a serious violation, he may be assessed up to \$1,000. The only difference between the serious and non-serious violation is the permissive nature of the penalty if it is regarded as nonserious. From this point on, the penalties become more severe, adding strong teeth to the act.

Subsection (d) provides that any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, may be assessed a civil penalty of not more than \$1,000 for each day during which the civil violation continues.

Subsection (e) states that an employer who commits a willful violation that causes death of an employee shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than six months, or by both, and after the first conviction, the penalty is doubled, that is, a fine of not more than \$20,000 or imprisonment of not more than one year, or both.

Subsection (g) provides for any person making any false statement, representation or certification in any document filed or required to be maintained under the act, upon conviction, a fine of not more than \$10,000, imprisonment for not more than six months, or both.

Subsection (j) gives to the commission authority to assess the civil penalties. Recall that the secretary's office first proposes the civil penalties and, if they are not contested within fifteen days, they automatically become the order of the commission. If the matter is contested, then the commission would have authority to set the penalties within the limits stated.

This short review of the new Occupational Safety and Health Act should make it clear that all lawyers, not just those who regularly advise employers or labor organizations, should know the major provisions of this legislation and how it affects clients who will come for guidance. It is a major step on the part of the Federal Government into the national employment picture.

MERCY COLLEGE OF DETROIT

HON. MARTHA W. GRIFFITHS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRIFFITHS. Mr. Speaker, it is with pleasure that I place into the Record an article on the new president of Mercy College of Detroit, Sister Agnes Mary Mansour. Sister Agnes Mary not only is a Detroitite but a graduate of Mercy itself, which I am proud to say is a part of my 17th Congressional District. The sister's outstanding work as a teacher and scholar is recognized throughout the country and her new plans and projects for Mercy offer much promise to the Detroit community. The article written by Katherine Sudomier, which appeared in the Detroit News Sunday magazine, follows:

A QUIET NUN WANTS TO REVOLUTIONIZE HEALTH EDUCATION (By Katherine Sudomier)

By the time dark-eyed Agnes Mary Mansour graduated from Mercy College of Detroit and had gone on to become a Sister of Mercy, she had some very distinct ideas about what was wrong in the training of hospital personnel.

Many were being "over-educated" for the jobs they were doing; some were attending college for four years for a position they could learn in a single year. The educational waste was discouraging to students and added to hospital costs of patients.

Today—with a doctorate in biochemistry, several years of college teaching experience and a year's fellowship in administration to boot her along—she is in a position to do something about it. She was inaugurated Friday as Mercy's president, but her plan already is in motion.

A five-year experiment underwritten by \$445,000 in Federal Health, Education and Welfare funds promises to revolutionize the preparation of students in the field of allied health sciences. The sum spread over five years was part of \$2½ million given in 1971.

In short, Sister Agnes Mary's approach to education of students in associated medical fields provides education in at least two stages, allowing a student to get off at an early level with potential certification in his or her study area.

It is designed to reduce college dropouts and prepare needy students for a job sooner; lower medical costs may be an added bonus. Most of all, the concept may be workable in a whole variety of academic fields outside medicine, even engineering.

It has special attraction to the high school graduate who is not sure he wants to spend four years in college. Under the Mercy plan he can spend two or four years and leave at either stage with a specific job capability. Still the program is built into the context of a four-year liberal arts curriculum.

The basic concept of the program appears so simple that it seems amazing no one has done it before.

Since its announcement, Mercy has received a flood of applications from people of all ages anxious to participate in the program.

There is one hitch: In the program financed by HEW, Mercy necessarily must limit the number of students able to participate. Sister stresses that the HEW grant basically finances a test run of the concept.

The first year is being spent in gathering additional faculty and planning the curricula. The next four years will test its merit. So, at the moment, Mercy must encourage many applicants to enroll in other areas of study.

Because of its innovative nature, it immensely improves the job advancement prospects of health field technicians and professionals.

Sister believes for better health care, greater responsibility must be given to well prepared but lower ranked medical personnel, who are left dilly-dallying with test tube cleaners and low salaries.

Recognizing her capability, HEW this month named her as consultant in the development of allied health manpower in the department's special area which assesses the merits of health education programs seeking federal funds.

Mercy, perhaps best known until now as the alma mater of a recent Miss America (Pamela Ann Eldred), will try to alter the entire U.S. medical caste system with this new approach. What attracted HEW interest was the plan's basic belief that many people in medical fields are overtrained for the jobs they perform. Also, important allied health jobs could be filled more quickly.

Initially, Mercy's program will mean more graduates in the three fields included in the HEW-funded project—medical technology, medical record library science and dietetics. The college hopes to add others as the experiment proves itself.

Sister Agnes Mary's fondest hopes are tagged to her theory for the next stage: Graduates of two-year programs will do the more routine technical tasks now done by those with baccalaureate degrees. These latter professionals are expected to relieve doctors of many duties they now perform, allowing them more time to spend on greater medical problems.

Under current practice a medical technologist isn't allowed to release test results to patients, even though he makes and evaluates the test in many instances. More of the routine, semi-skilled jobs now being performed by over-qualified graduates will open up to undergraduates who are trying to pay their way through college.

Moreover, the upgrading of the lower-rank job will open job opportunities for those who want a skill they can learn quickly and cheaply.

"Better distribution of the health services is absolutely vital for better health care," Sister warns, adding that if professional

groups don't help raise the status of these fields, the government might.

In Michigan there is one doctor for every 933 people, with an even higher ratio in rural areas. This compares favorably to South Carolina, with one physician for 1,341 residents, but unfavorably with New York, with one doctor for each 518 people.

"In one clinic I know of there is no difference between the job performed by the four-year graduate medical technologist and the two-year certified lab assistant, except the pay," says Sister.

Sister Agnes Mary admits she had great reservations about assuming the new job of president. "If Mercy is going to have a bad administrator, it may as well be someone who loves the college, too," she says, with unconvincing meekness, in her super-tidy office.

To understand what she gave up to be college president, you have to know what she had: She had a rare kind of partnership with her students, where college was not only fun but a shared learning experience, instead of an advise and consent forum.

Sister was a resident advisor in Manning Hall, the only girls' dormitory at Mercy. It is the only dorm, except for a small house which harbors a handful of Mercy's male students. Mercy went co-ed in 1964, now has 400 full and part-time male students.

Her room in Manning had snatches of poetry on wall posters. One poster read: "Life is Big."

"You always knew she would welcome you," says a senior student, "despite countless chemistry tests. And if you had a problem, she always came up with some kind of solution, at least something to grab onto."

When Sister joined the students for card games or sports, she gave her all. "She's fantastic at cards," says a student, "and she likes all sports... volleyball, baseball, touch football, horseshoes." In fact, Sister is a basketball coach for the college's women's team, a sideline she hopes to continue in spite of the multiple demands of her new office.

Most of Mercy's students are first generation college goers who commute, as did Sister Agnes Mary when she attended Mercy 20 years ago. They are from middle class families which have worked hard to afford college. (Over 60 percent receive some financial assistance.)

Mercy is a "practical" liberal arts college. You don't go there if your chief goal is to learn cocktail party chatter. That's another reason she thought so hard—and so successfully—about a step-ladder approach to education: Some students simply couldn't last out a four-year course. They'd need to get off, and get jobs and, maybe, finish later.

"Most of our students come with a strong desire to serve," says Sister Agnes Mary. "They come asking: 'How can I best learn to give of myself?' It puts an obligation on us educators to foster this desire, to let it grow."

As Josephine ("Jo") Mansour she attended St. Charles Elementary and High School on Detroit's East Side. Her father worked for Murray Body Corp. and her mother came from the Mabarak real estate family. Her parents still live in the neighborhood around Townsend and St. Paul. "It's always a kiss on the cheek when you go there," says a friend of Sister's.

"Her mother and father say: 'How'd it go today, Jo?' And she says: 'Oh fine.' And that's all. They don't make anything big out of her job. But they are sweet folks, and so proud of her they beam all over."

Sister Agnes Mary says she felt the call to a religious vocation during high school and her undergrad years at Mercy, but: "I wouldn't admit it." After college graduation she admitted it and began to prepare to become a Sister of Mercy. She says: "I knew by then it was what I wanted for sure, and I've never been sorry. I had plenty of time to make up my mind."

Stymied as a med tech grad, Sister got her master's degree at Catholic University in Washington, D.C., returned to Mercy and taught chemistry, got her doctorate in biochemistry at Georgetown University in Washington, returned to be chairman of Mercy's Chemistry Department and then the Natural Science Department.

In 1970-71 school term Sister Agnes Mary was an American Council on Education administrative intern at the University of Kentucky in Lexington.

Mercy offers all its professional programs within a liberal arts context. Besides its interest in the health field, the college has special programs aimed at civic betterment. Among these are preprofessional social work and a law enforcement and protection program, coordinated by former Detroit Police Commissioner Johannes Spreen, and featuring present Commissioner John Nichols and his wife, Jean, as lecturers.

"I want the corner of Southfield and Outer Drive to be truly a college of Mercy," Sister says, reflecting on her own philosophy.

"We want to prepare students who are intellectually competent, deeply compassionate and committed to serve their God and their fellow man."

"We want to learn enough so it just all flows into their profession."

If all goes well, the training of medical personnel in the country may be vastly changed because of her.

THE TAIWAN CONCESSIONS: A RED CHINESE VICTORY?

HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. SCHMITZ. Mr. Speaker, in times like these we need to recall the words of Patrick Henry on the eve of the American Revolution, in response to the appeasers of his day:

They cry Peace, peace! when there is no peace. Is life so dear, and peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God!

Fortunately there are still voices in our land that will not let us forget the reality of chains and slavery, the reality of a tyrant government's unending war against its own people, that lies behind all the talk of peace and understanding with the Red Chinese regime in Peking. Fortunately there are still voices that will not let us forget that our President, in his recent visit to Peking, took a very long step toward forcing the last 15 million free Chinese into subjection to these same Communist tyrants. Here are two of those voices—William F. Knowland's and Tom Anderson's. The editorial "The Taiwan Concessions: A Red Chinese Victory?" appeared in former Senator Knowland's newspaper, the Oakland Tribune, on February 29. The article "All-Time Murderer" was one of Tom Anderson's widely syndicated "Straight Talk" columns early this month.

The articles follow:

THE TAIWAN CONCESSIONS: A RED CHINESE VICTORY?

When President Nixon revealed last July he was going to Peking for a face-to-face summit with the leaders of Communist China, the question of Taiwan was generally

acknowledged to be the starting point for any accord that might be reached.

At that time, we labeled the whole venture a "gamble where the odds are heavily against (the United States) from the start." Our concern for the integrity of this nation's solemn treaty obligation with the Taiwan government was shared by many diplomatic observers familiar with the powerful, conflicting forces churning about in the frothy geopolitical cauldron of Asia and the Far East.

Now that the President's epic journey to the heartland of Chinese communism has ended, the worst fears of last summer seem fully confirmed, and the "gamble" appears only to have paid off in terms of a signal diplomatic victory for Premier Chou En-lai and his Marxist government in Peking.

By failing to confirm in the joint communiqué with Chou the U.S. commitment to protect Taiwan against external attack, the President even seems to have gone far beyond the previously announced Nixon doctrine abdicating the U.S. role of a global anti-Communist force. Remaining aloof and neutral in another's dispute is one thing, ignoring a promise to protect a friend is quite another.

The United States now acknowledges Chou's long-standing claim that Taiwan is part of China, and the promise of eventual withdrawal of all U.S. troops from the island seems to portend the day when an armed invasion will be launched by Communists secure in their knowledge that there will be no U.S. response.

Chou promises to "liberate" the 15 million Chinese on Taiwan, but as the reporters who accompanied Mr. Nixon related, there are already precious few liberties under the Chinese Communists. All mainland Chinese life is so closely controlled that true freedom and true liberty, even approximating the American meaning, are simply not known and not permitted.

But all this Mr. Nixon has known for many years. Is the President now prepared to sacrifice the Nationalist government and the Taiwan people to a life of Marxist slavery in order to find an accommodation with Chou En-lai?

There were no counter-concessions by Chou or by Red party Chairman Mao Tse-tung, and until these Red leaders show evidence beyond mere words of a true intention to work towards Asian peace, then the President's virtual disavowal of a solemn American treaty obligation seems both unprofitable and potentially dangerous.

Indeed, the people of Taiwan may be excused for reacting with the same uncomfortable nervousness as did the people of Czechoslovakia after Britain's Prime Minister Neville Chamberlain returned from Munich with the proud announcement of his "peace in our time" deal with Chancellor Adolph Hitler of Nazi Germany.

ALL-TIME MURDERER

(By Tom Anderson)

Measured in terms of murders, Mao Tse-tung is the greatest criminal of all time. He has been responsible for the murder of an estimated 64 million people. Millions of them were his enemies. Other millions were merely unfortunate enough to be old, sickly, unable to work. Mao Tse-tung had them killed, like we would kill chickens or hogs, and then had their bodies ground up and spread on the land for fertilizer.

Our President is thus now planning a gigantic "Marshal Plan" for Red China. Since they have no gold, or even dollars, and virtually nothing to sell us, the President plans for us to give them billions of dollars worth of fertilizer and other goodies. Our government, of course, will pay our Big Business a good price for the food, fertilizer, trucks, tires, farm equipment, computers, cars, elec-

tronic equipment, etc., sent to Mao. Thus Big Business will have more profits and we can delay the coming financial crash. Also our Tycoons can be more generous in their donations to the Administration in the coming Presidential campaign. And, we might even have a favorable balance of trade once again. Most important of all, however, this gigantic aid to Mao Tse-tung will save his regime from toppling and enable them to defeat that old warlord Chiang Kai-shek and conquer Formosa.

These grants will also make Russia jealous and this will open the door for us so we can give them more billions of dollars in goods and equipment to make their brand of tyrannical work too.

With China and Russia fat and happy and us bankrupt, we have thus postponed the anticipated conflict between them and assured ourselves that the only war between them will be the one they fight over our grave.

Have you wondered why you have not read any report or seen any TV news by the commentators who accompanied Nixon, which told you the truth about Mainland China? The answer is simple. No honest reporter was allowed to go.

The following truth from *Review of The NEWS* gives us the real story:

"Correction, Please!—Item: From an article in *Reader's Digest* for February 1972:

"Despite a flint-like quality of mind and body, Chou (En-lai) can be very human. Once he stopped at a rural commune to chat with some school-girls who were taking their turn at farm work. 'Did you cry when you first arrived here?' asked the Premier, noticing their muddy clothes. The answer was 'No.' But Chou continued, 'It would not have mattered if you did. It's only human to cry when you are not used to something.'"

"Correction: One might as well depict Adolf Hitler as a lover of small animals; This maudlin effort by the *Digest* to portray a Communist cutthroat as a man of compassion is a betrayal of the trust of millions of its readers. And it is especially outrageous since the *Digest* has itself published numerous articles over the years about the horrible conditions which are the norm in Chou's China.

"The scholarly journal *Issues And Studies* for March of 1971 carries a review of a recent biography of Chou En-lai in which the reviewer states: 'The author further points out Chou's genteel and elegant manner is in extreme contrast to his ruthless way of handling the Communist Party's secret service. The most shocking example known was the case of Ku Shun-chang's in 1931. . . . Ku Shun-chang, a top secret agent and captain of the assassination team under Chou's command, was arrested by, and then defected to, the (Nationalist) government in 1931. After defecting, Ku revealed important information. This led to a massacre of Ku's whole family, who were all buried alive on the instructions of Chou En-lai. In the official files of the French Concession in Shanghai, where the murder took place and was later disclosed, Chou remained a wanted murderer.' The *Reader's Digest* conveniently overlooks many such cases in its puff about Chou.

"Then there are the untold millions consigned to slave labor camps in Red China. Even the United Nations admitted in 1955 that 20 to 25 million Chinese were in 'regular' forced labor camps, and that an additional 12.5 million were in 'corrective' labor camps. By 1968, some 25 million Chinese had perished in those camps. And it is Chou En-lai who oversees the operations of those death camps—murder facilities to which the *Reader's Digest* applies the euphemism 'continuing disciplinary migrations'!

"In 1966, nearly 11 million Chinese youths were organized into what was called the Red

Guard, gangs of Communist storm troopers that blanketed China with disruption, terror, and bloodshed for three years—all with the advice and consent of Chou En-lai. In *Peking's Red Guard*, a thoughtful book co-authored by Dr. S. C. Y. Fan and published by Twin Circle, we read that: "Lin Piao was acclaimed their commander, and Chou En-lai and Chu Teh became their advisors. With these men at their head, the Red Guards acquired prestige, and most important, the support and power which enabled them to do whatever they wanted in order to carry out the Great Proletarian Cultural Revolution."

"Ma Sitson, China's leading violinist, gave to *Life* magazine in 1967 an eyewitness account of Red Guard activity. The great violinist observed: 'Elsewhere in the city (Peking) there were many terrible incidents during this period. Students at one high school actually beat to death every one of their teachers. The woman who lived next door to us in the west city was accused of having a radio transmitter and sending messages to Chiang Kai-shek. Red Guards pulled her from her house into the street and killed her. People spoke of heaps of unburied bodies rotting in the mortuaries.'"

"The *Digest's* slant in this article is also illustrated when it says: 'Now with President Nixon's spectacular policy reversal and the overwhelming U.N. vote, Mainland China's 750 million people are coming into their own.' This is madness! One might as well write that the people of Germany came into their own when Hitler was rounding up the Jews. Rather, the *Digest* should have reminded its readers of the following analysis by the Asian People's Anti-communist League: 'Let us always bear in mind that the Communist system is more cruel and inhumane than any in previous history. It is diametrically different from the traditional system which had been preserved through long ages.' The families of 64 million Chinese murdered by Chou En-lai and his Comrades will testify to that!

"There is a saying among refugees from Chou's China that the Yellow River is at flood tide, swollen with the tears of the Chinese people. Those are the tears *Reader's Digest* should be concerned about, instead of eulogizing the mass murderer with whom President Nixon is now breaking bread."—Copyright 1972, The American Way Features.

SHOPPING FOR AUTO INSURANCE

HON. WILLIAM L. HUNGATE

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HUNGATE. Mr. Speaker, in these days of debate on no-fault insurance, it appears the insurance commissioner of the State of Pennsylvania has found a somewhat different approach to the citizens' problems regarding automobile insurance. The following article merits further study:

[From The Commercial Appeal, Memphis]

SHOPPING FOR AUTO INSURANCE

How do you pick an automobile insurance company?

Some do it simply by giving their business to a friend who happens to be an insurance agent. Some do it because they have seen a company's name in an advertisement. Some others do it by finding a company which is willing to write insurance to cover

the applicant and his family, having found that other companies would not.

All that maybe changing, if what happened recently in Pennsylvania is extended throughout the nation.

That state's insurance commissioner, Herbert S. Denenberg, has issued what he says is the first "Shopper's Guide to Auto Insurance." Prepared by the Pennsylvania Insurance Department, this guide compares annual premiums in six different rating territories for the 12 largest automobile insurance writers who write approximately 50 per cent of the auto insurance business in Pennsylvania.

The guide reveals amazing variations in premiums for the same classification of policyholders. For example, a 19-year-old driver, for specific coverage, faces premiums in Philadelphia that vary from \$1083 to \$1716. And an adult driver in Bedford and Fulton counties of that state can find premiums that vary from \$132 to \$212 for the same coverage.

The publication has met strong resistance from the insurance companies, of course. The insurance commissioner admits his guide is "not to be used as the last word" in selecting an insurance company. He says the consumer should be aware other factors can enter into premium differences. These differences can include variations in policy coverage features, service of agents, financial strength of the companies.

To his critics, he offers the same advice he gave last year when there was strong criticism of a similar guide to Pennsylvania hospitals. It is: "If you don't like it, publish a better guide yourself."

It seems to be sound advice. Maybe insurance companies should be working on such guides of their own, with their own explanation of differences in premiums, now that the existence of such differences is coming out into the open.

A TAXATION WITH REPRESENTATION

HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. SCHMITZ. Mr. Speaker, several weeks ago one of my constituents, Mrs. Harold Alderfer of Costa Mesa, Calif., wrote me a letter which expresses more vividly than any other I can recall receiving, just what the relentless "soaking" of the hard-working, productive middle and lower middle income taxpayer is doing to our country and our people. Mrs. Alderfer has no quarrel with me, as she now realizes, since I fully agree with what she says about taxations, welfare, and the courts, and have consistently voted against the increases in Government spending which require high taxes, and for limiting the power of the courts which has been so much abused. But it would appear that she does indeed have a quarrel with many other Members of the body, who I hope will consider how they might answer her if she were their constituent. Her indictment is directed toward the Congress of the United States as a whole.

The following letter is published with Mrs. Alderfer's written permission. In view of her sentiments expressed in it,

I am especially proud that in her second letter giving me permission to insert this one in the RECORD, she tells me that:

In my 42 years, I have never felt so well represented by a Congressman."

The letter follows:

COSTA MESA, CALIF.,
February 4, 1972.

JOHN G. SCHMITZ,
U.S. Congressman, 1208 Longworth House
Office Building, Washington, D.C.

DEAR CONGRESSMAN SCHMITZ: This letter comes from an extremely worried mother of 3, who cannot seem to control the fate of our family any longer because of the high cost of living and taxes imposed on us by you lawmakers.

We have always tried to live within our \$10,000 annual income. There are no luxuries such as vacations, new cars, new clothes, entertainment etc. All the money earned in the family is spent on food, house payments and taxes, the bare necessities.

We are in a critical state financially as we can no longer keep up with the inflationary costs of food, taxes etc. We have had to borrow on our life insurance to merely pay the taxes and we have no reserve. When we purchased our 9-year old home, it was what we thought we could afford. Within a year the valuation went up and our taxes followed and they keep going up each year.

Across the country people in the professions such as doctors, big industry and the like have received raises. My husband did not get a raise. The cost of postage, food and clothing keep going up. It makes me angry when I see how welfare costs have gone up. I'm not against helping people but I am against being taxed to feed hippies, transients and helpless individuals who don't even try to help themselves and complain about not getting enough help.

People like us who have gone along paying higher taxes supporting these people are finding ourselves getting into the same predicament—the tremendous difference being that we have tried for so many years to stay with a job, have done menial work just to pay taxes and foregone all luxuries because we need all the money earned to buy food for the family. If you lawmakers don't do something for people like us, believe me, there will be an uprising and it won't stop until something is done for people like us who are genuinely trying to make a go of living.

Another thing has become a laughing matter. What has happened to our court system? The criminals come out looking like angels and we the people and our law enforcement people are made to look like tyrants. What is happening to our country? We have Sirhan, Angela Davis, Richard Spec and others, who are in jail or prison going almost free. The cost of holding their trials etc. keeps mounting and we are paying for that—but what is so maddening is that the people they murdered cannot speak for themselves and we seem to be helpless to do anything for the dead. Why has it become more glamorous to be a criminal type than one who supports the laws of the country?

So many things in this country need reform. America is becoming a sad country, it reminds me of what we fought for long ago—taxation without representation! Can't you representatives do something for us? We pay your salary. I love this country and don't like what is happening to it.

Is there anything you people can do to help this family? There must be many thousands like us who are at the breaking point as a family. Where can we go? What can we do? Is welfare the next step? You people who set the taxes are devouring this family. Does it make you feel good?

Sincerely,

MRS. HAROLD ALDERFER.

ASSISTANT SECRETARY FOR TOURISM, C. LANGHORNE WASHBURN, TESTIFIES BEFORE HOUSE SMALL BUSINESS SUBCOMMITTEE

HON. WILLIAM L. HUNGATE

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HUNGATE. Mr. Speaker, as chairman of the Subcommittee on Environmental Problems Affecting Small Business, of the Select Committee on Small Business, which recently concluded the first part of a series of hearings on small business opportunities in outdoor recreation and tourism, I believe the hearings have produced some valuable information which will be of great benefit to the Congress.

I would particularly like to call attention to the testimony of the Assistant Secretary of Commerce for Tourism, Hon. C. Langhorne Washburn, who spoke about the efforts of the U.S. Travel Service in promoting tourism to this country from abroad.

Secretary Washburn is to be commended on the high quality of his statement and for his enthusiasm and cooperation in testifying before the subcommittee.

Because of the great interest of my colleagues and the American people in this subject, I am inserting Secretary Washburn's statement at this point in the RECORD:

STATEMENT OF C. LANGHORNE WASHBURN,
ASSISTANT SECRETARY OF COMMERCE FOR
TOURISM

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify before you today.

I will begin by outlining the importance of international tourism and what it means to our economy, cite some specific characteristics of foreign travel in the United States, discuss briefly some of the programs of USTS and EDA designed to increase foreign tourism to the United States and improve the host facilities for both foreign and American tourists, and conclude with my thoughts on the role of small businesses in foreign tourism and recreation.

OVERVIEW

The international travel market is a multi-billion dollar foreign exchange earner representing the largest item of international world trade. Last year, world-wide international travelers took 181 million trips and spent an estimated \$19.9 billion. The United States received 7.6% of the arrival market, hosting 13.8 million arrivals, and 14.6% of the dollar market, earning \$2.9 billion. With respect to other host countries of the world, this Nation ranks first in terms of tourism receipts and fifth in terms of the volume of visitor arrivals.

To me, the importance of the entire market cannot be stressed enough. World-wide, this market grew 137% between 1960 and 1970 and is expected to continue to grow at an estimated 7% per year, reaching 280 million trips by 1980. Yet, in the last 10 years, the U.S. share of the total remained relatively constant. This country has merely been keeping pace with a growing market. The untapped VISIT USA potential is tremendous and expanding each year, as per capita incomes continue to rise throughout the world. It is currently estimated that some 82 million people of the world have the fi-

nancial ability to travel to the United States. Further importance of this market can be seen in the following:

Each tourist from overseas countries equals an export item worth \$400.

Each \$20,000 spent by foreign tourists in the U.S. creates one job. Hence, last year, foreign tourist spending (excluding transportation) provided for 122,580 new jobs.

For every 100 people directly employed in the travel industry, 60 to 100 back-up jobs are created in related industries.

Dollars earned from tourists stay in the local area directly benefiting the residents and small business of the area.

It is factors such as these, in addition to the fact that the United States is behind other national governments in tourism promotion—currently, we rank 19th—that led President Nixon in his State of the Union Message to request "that the budget for the United States Travel Service be nearly doubled in the coming year."

In addition there are certain factors currently at work which we must capitalize on fully through increased promotion abroad. In 1972, such factors favoring increased foreign travel to the United States are (1) the recent U.S. dollar adjustment which makes it less expensive for foreign travelers in this country, and (2) the reduction of air fares across the North Atlantic. In 1976, the Bicentennial and Winter Olympics are expected to provide a great impetus for increased travel to this country. In fact, we are anticipating between 22 million and 25 million visitors in 1976, with receipts expected to total about \$5 billion. I would like to make sure this forecast is reached, if not surpassed by (1) the proper and adequate promotion of this country abroad; and (2) developing the necessary tourist facilities to fully host these visitors.

SPECIFIC CHARACTERISTICS AND DIMENSIONS OF FOREIGN VISITORS TO THE UNITED STATES

Origin—Foreign visitors to the United States come from every corner of the globe but in the greatest numbers from Canada and Mexico, comprising 82% of all arrivals and 59% of all foreign exchange earnings. Visitors from overseas countries, while accounting for only 18% of the arrival market, represent 41% of our tourist dollar earnings. Looking more closely at the overseas market, Europe represents the most important area, accounting for 45% of all overseas arrivals.

Key European countries are the United Kingdom with 13% of the overseas market (\$25,555), followed by West Germany with 8.1% (203,010); France with 5.4% (133,604); Italy with 3.7% (93,421); and the Netherlands with 2.4% (58,748). The second most important geographic area is Asia/Oceania, accounting for 24.4% of all overseas arrivals, with Japan (311,066—12.5%) and Australia (70,860—2.8%) being the two dominant countries. The third key area is South and Central America, representing 17.1% of all overseas arrivals with the main tourist generating countries being Venezuela, Colombia, Brazil and Argentina.

Earnings—Our earnings from these visitors vary according to their country of origin. In terms of overall averages, excluding transportation, each overseas and Mexican visitor is equal to an export worth \$400. When Canadian visitors are included, the figure is lower—\$200. Thus, while Canadians comprise the majority of foreign visitor arrivals, their per capita expenditure in the United States is the lowest, equaling only \$90. Consequently, considerably more Canadian visitors are needed to equal the per capita spending of the West German (\$375), Mexican and Japanese (\$500) or Venezuelan (\$675) visitor.

Seasonality—Over 40% of our foreign visitors come to this country during the summer

months of June, July, and August, while less than 20% arrive during the winter months of November, December, January and February. This seasonality is representative of all international travel, primarily brought about by employers encouraging their employees to take summer vacations, with entire companies in Europe being closed during July or August and by the summer vacations of school children. This problem has been receiving increased attention by the Organization for Economic Cooperation and Development (OECD) Tourism Committee which is presently investigating possible solutions.

Average Length of Stay—Length of stay, as per capita expenditure, similarly varies with the visitor's country of origin. The overall average for all overseas visitors is estimated at 15 days, with Europeans staying an average of 17 days; South Americans, 15 days; Japanese 10 days; Mexican visitors who travel outside the border area stay on the average of 10 days; and Canadians, 5 days.

WHERE DO THEY GO/WHAT DO THEY SEE?

Perhaps the one generality which could hold true is that foreign visitors are interested in "seeing America"—just as our citizens are interested in doing when they travel within this country. Our outdoor scenic attractions as well as the sights and sounds of our big cities, day or night, are appealing to the foreign visitor. To cite some specific examples, the American Frontier West with its Indians, mountains and deserts, are particularly popular with Europeans, chiefly among the West Germans. The warm, sunny areas of the United States, and sandy beaches are popular, notably among the British, Scandinavians, and Canadians. The Japanese are interested in seeing all that is possible in the time allotted—from beaches to big cities to industrial plants.

Shopping in our major cities is a popular activity, particularly among Latin Americans, as is visiting Disneyland or Disney World. In fact, large festivals or exhibits are generally popular with Latin Americans as exemplified (1) in the increase (up 50%) in Mexican visitors to this country during the period of the HemisFair in Texas; and (2) the number of Mexicans visiting a USTS exhibit in Mexico City—over 1,000,000 in 3 months.

There appears, however, to be some discrepancy between what visitors would like to do and what they actually do. Generally, they stay within a small radius of the U.S. port at which they enter. For example, the majority of Mexicans visit only the states of California, Arizona, New Mexico and Texas. Europeans generally visit the Middle to Northeastern areas of the United States. Latin Americans see areas in the Southeastern United States, notably, Florida and Puerto Rico; while visitors from Asia primarily tour Guam, Hawaii and the West Coast of the United States.

Why is this so? Besides the usual degree of discrepancy between intentions and actions, it may be due to such facts as (1) an increase in travel costs to see places outside the major port of entry; (2) fear of not being able to communicate outside the major gateway cities; (3) less familiarity with the interior of the United States; and (4) the existence of few available organized tours, although more are offered now than 5 years ago.

It is in this area that I feel the small businessman has a definite role to play—in serving the foreign tourists' needs, particularly outside of the big cities. The trend currently, is toward more promotion of areas other than the already popular foreign tourist destinations such as New York City and Northeastern U.S. Chicago is becoming increasingly popular as a gateway city for foreign visitors. Las Vegas, last year, became an official international port of entry. Airline advertising is beginning to feature travel to areas West of the Mississippi as well as to the

East. All this actively represents an attempt to make America more accessible and attractive to the foreign visitor to better meet his needs and expectations.

USTS PROGRAMS

The programs of the United States Travel Service designed to promote and host foreign visitors can generally be classified under two broad headings: (1) stimulating demand; and (2) improving tourist plant facilities. Some of the specific programs are outlined below:

(1) Stimulating demand

Consumer advertising campaign costing over \$2 million in Canada and Europe, reaching over 30 million people.

Distribution of over 6 million informational brochures (in German, French, Spanish, Italian and Japanese) featuring U.S. regions, gateway cities, historic sites, and national parks, in all of the major tourist generating countries.

Special "high visibility" VISIT USA exhibits in Canada, Mexico and Japan. Total visitor attendance was estimated at 3.5 million.

VISIT USA familiarization tours for 3,000 foreign tour operators and foreign travel writers to acquaint them with the attractions and tour offerings of the United States.

VISIT USA seminars with the U.S. travel sellers and foreign tour packages. The purpose of these seminars is to save the foreign tour operator the time and money of a trip to the U.S., and to encourage him to develop and sell moderately priced VISIT USA package tours for both groups and individuals.

(2) Improving tourist plant facilities

Hotel/motel language certification program

To date, 182 hotels and motels have multilingual staffs at their front desks, switchboards and restaurants, speaking Spanish, French, German or Japanese. The hotels are publicized abroad and display a USTS plaque indicating "Welcome" in the various languages.

Multilingual Port Reception Program

Multilingual student port receptionist corps are in operation in New York's Kennedy International Airport, Seattle/Tacoma and San Juan International airports. USTS conducts this program in cooperation with the local authorities. The Receptionists assist incoming foreign visitors in clearing Customs and Immigration and on making transportation connections.

Travel Phone USA

Travel Phone USA is nation-wide, multilingual, toll-free telephone interpreter service sponsored by USTS in cooperation with Travelodge International. The visitor can dial the service from anywhere in the Continental United States (except Alaska) and obtain telephone interpreter assistance, or answers to his travel-related questions, in Spanish, French, German or Japanese. USTS explains the availability of this service in brochures distributed abroad. In addition, television clips produced by USIA on the Travel Phone USA have been seen by more than 360 million residents overseas.

Americans-At-Home is a USTS organized community-operated host plan for foreign visitors. 73 cities throughout the United States are participating from Syracuse, New York to Joplin, Missouri, to Tucson, Arizona. The program is designed to enable foreign visitors traveling without sponsorship to get to know Americans informally in their homes. USTS prints in nine languages and distributes abroad a folder giving details and telephone numbers of the community-sponsoring groups around the country.

In addition, in the area of tourist plant development, the National Tourism Resources Review Commission is currently studying the existing facilities and will make recommendations on the type of programs needed to

meet the needs of all tourists—both foreign and domestic, to 1980.

Two other major USTS programs, I believe I should also mention are: (1) The International Convention Office; and (2) Matching Grants Program.

(1) **International Conventions Office** located in Paris, played a substantial role in winning 8 major international congresses for the United States last year, bringing the total to 26 congresses since its opening in 1969. Foreign attendance at these 8 new congresses is expected to equal 21,000 with spending in excess of \$5.9 million. In addition, last year, a Washington-based USTS international conventions manager was appointed to provide domestic support to the Paris Office in the total effort to attract a larger share of the world's international congresses.

(2) **Matching Grants Program**—Last year, USTS launched its new matching grants program with regions, states, cities and public or private non-profit organizations, for the purpose of increasing promotion and improving domestic services for foreign visitors. USTS is allowed to fund up to 50% of the total cost of the project—available USTS funds equaled \$550,000 last year. As of March 1, 17 grants have been made totaling \$215,000; 3 have been for the production of films, 1 for a travel mission to Japan, 2 for convention bureaus for the installation of simultaneous language translation facilities and the remainder for joint advertising with USTS in Canada and Mexico.

In addition to USTS programs, many of those of the Economic Development Administration (EDA) involve tourism development. Since 1965 EDA has invested over \$98 million for tourism and recreation projects to benefit lagging economies especially in rural areas of this Nation.

Some specific examples of this agency's programs include public works grants for state park development and tourism and recreation projects on Indian reservations. Grants and loans for state park development totaled approximately \$20 million and included parks in the states of Alabama, Arkansas, Kentucky, Tennessee, Virginia and West Virginia, while grants and loans were provided to 25 Indian reservations in 15 states totaling \$31.4 million.

In addition, EDA provides business loans and working capital guarantees and has funds available for feasibility studies and management and operational technical assistance to tourism and recreation related activities.

SMALL BUSINESS AND TOURISM

I believe that small business enterprises can play an important role in servicing the needs of foreign tourists in their particular areas by providing:

- (1) The needed people-to-people contact, and
- (2) The necessary tourist facilities, particularly in rural areas and smaller cities of the United States.

(1) People-to-people contact

Perhaps one of the best ways to see and learn about a foreign land is on a personal basis, a person-to-person contact. It has oftentimes been said that "It is the people that make the place." In fact, the Bahamian Ministry of Tourism was so concerned with the unfriendly image of its people that it launched a nation-wide "hospitality" campaign and began training all individuals servicing the tourist—from taxi driver to waiter to shopkeeper to hotel clerk, to be friendly, congenial hosts, representing the Bahamas as a Nation.

(2) Foreign tourist facilities

Small businesses have a most important part to play in servicing the foreign tourist—from the guest-house owner, the restaurateur specializing in home cooking, the talkative shopkeeper, to the local tour guide. For-

elign visitors want to see this part of America as well as the big cities, the hotels, restaurants and large department stores.

Small businessmen can work with those communities who belong to the USTS Americans-At-Home Program. Each community could plan for the supply facilities it feels are warranted by the current and expected volume of foreign visitors to their area, and to the extent the community is desirous of developing tourism in their area. USTS can provide additional assistance with matching grants to the community, group of communities, city, state or entire region, for increased promotion or development of tourist facilities for foreign visitors.

While the program limits grants to non-profit organizations, the small businessmen can work with the local recipient of the grant. Currently, USTS is helping to increase the flow of visitors to destinations outside of the major gateway cities by not only providing grants to Miami, Las Vegas, San Francisco, but also to New Orleans, Lincoln, Nebraska, and the Southern Highlands of North Carolina, Tennessee, Georgia and Virginia.

TOURISM AND THE ENVIRONMENT

I have stressed repeatedly to both industry and state travel leaders the need for the proper development of tourist attractions, preserving existing destinations, and nurturing and protecting the essential characteristics which attract tourists to an area. Something seems to happen when tour destinations are developed too rapidly and without proper planning. They seem to lose their appeal. They become spoiled. And tourists leave them and move on to new "in" spots.

I believe tourism is wholly compatible with environmental values. Indeed, development of the kinds of attractions which tourists appreciate will most often involve "showing off" the environmental values which this nation has to offer, so that it is in the interest of the tourism industry to protect this environment. Thus, tourist development can exist symbolically with the culture and heritage of the community when it is planned properly. I believe that the travel industry has recognized the challenge of proper environmental development. In fact, The Travel Research Association, an industry-government association, consisting of universities, advertising agencies, airlines, hotels and motels, and government tourist associations, devoted its most recent conference to "Tourism and the Environment."

The foregoing was intended to provide you with the broad overview of international travel to the United States, the programs designed to increase the flow of tourism to and within this country, and a role small businesses can play in this important and growing market.

Mr. Chairman, this concludes my formal statement. I shall be happy to respond to any questions you or the members of this Subcommittee may have.

Mr. Speaker, I was also pleased to have my good friend, Mr. Harold Koplar, chairman of the Missouri Tourism Commission and chairman of the St. Louis Tourist Association, testify before our subcommittee. He brought some valuable insights to our investigation of tourism, such as the growing trend of large companies to locate conventions in foreign countries because of cheaper cost for accommodations.

Mr. Koplar cited examples where large corporations arranged sales meetings in Portugal or other overseas locations. Sometimes they send as many as 4,000 of their employees to foreign tourist resorts as part of a tax-deductible sales meeting.

Mr. Koplar suggests that we reexamine our tax structure in regard to deductions for business conventions with a view toward encouraging greater domestic business travel. I feel this has merit and should be studied.

COOLEY'S ANEMIA RESEARCH DESPERATELY NEEDS FEDERAL FINANCIAL SUPPORT

HON. ROBERT N. GIAIMO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. GIAIMO. Mr. Speaker, the medical research community searching for the cause and cure of Cooley's anemia is large and growing, but desperately in need of Federal financial support.

Federal support would earmark Cooley's anemia as a particular priority for intra- and extra-mural programs of the National Institutes of Health, and continued support of the clinical research program of NIH will provide the subsidies to research facilities necessary to support study and service for patients with this and other mysterious but widespread diseases.

The high quality of existing medical research in this field—demonstrating the existence of a base of knowledge nearly ripe for practical application—has been shown in reviews of work on Cooley's nemi in the medical literature.

In 1966 and now in the March 16, 1972, issues of the New England Journal of Medicine, for example, review is made of research into the basic genetic and physiological causes of Cooley's anemia.

In 1964 and again in 1969 the New York Academy of Sciences and the Cooley's Anemia Blood and Research Foundation for Children jointly sponsored symposia on the problems of Cooley's anemia, resulting in the collection and publication of research papers totaling over 1,300 pages.

Much basic research has been done, therefore, with little or no Federal help. It is well known, however, that particular areas of medical research blossom when Federal direction and support are given. Researchers in basic areas are more able to direct their studies to practical ends, the clinical or applied part of medical research is enhanced within the institutions and organizations that conduct sophisticated medical research, results are more easily disseminated within the scientific community, avoiding duplicative work, and the work stimulated and supported by private foundations or general purpose research grants is brought to its fullest scientific and practical fruition.

Cooley's anemia is not unknown to medical research, Mr. Speaker, quite the opposite; but the practical help available to the physician or pediatrician who deals with Cooley's anemia is pitifully small. It is time to give national direction and support for this work, so that the patients and families affected by Cooley's anemia will benefit from the

best our Nation's scientific and medical community has to offer.

THE SOVIET THREAT

HON. STROM THURMOND

OF SOUTH CAROLINA

IN THE SENATE OF THE UNITED STATES

Tuesday, March 21, 1972

Mr. THURMOND. Mr. President, the February 1972 issue of the Aiken, S.C., Chamber of Commerce "News and Views" contains therein a timely article entitled "A Lesson From History."

I found the article to be a particularly interesting analogy of our present international situation. The author warns against deluding ourselves into believing that simply because we desire peace, others in the world will not seek to destroy our way of life. Although we have long heard the idle boasts of the Soviets to defeat our system, we must take heed of their growing military strength and face the reality that peace may be better obtained through bargaining from a position of power.

Mr. President, I ask unanimous consent that the article be printed in the Extensions of Remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A LESSON FROM HISTORY

"The Soviets' present buildup of strategic forces, together with what we know about their development and test programs, raises serious questions about where they are headed and the potential threats we and our allies face. These questions must be faced soberly and realistically." President Richard M. Nixon, *U.S. Foreign Policy for the 1970's: A New Strategy for Peace*, Report to the Congress, February 18, 1970.

The President of the United States issued the above warning to the Congress almost two years ago. Since that time the circumstances which provoked the warning have become much more serious. Yet no action has been taken to counter the danger.

For nearly 25 years Marcus Porcius Cato ended all of his speeches in the Roman Senate with the solemn intonation: "Besides, I think that Carthage must be destroyed." By 151 B.C. he had won his point; Rome declared war on Carthage and a fleet set sail for Africa. But the Carthaginians, now peace-loving and unprepared for major war, sought desperately to avoid it. The Roman Senate promised their hastily dispatched envoys that Carthage would be spared if 300 children from the most prominent families would be given up as hostages. With great uneasiness and lamentation, this was done. Next, the Carthaginian ambassadors were summoned to hear the Roman demand that Carthage surrender her remaining ships and implements of war. This, too, was done. Finally, the Romans demanded the evacuation of the city so that it could be burned to the ground.

When the Carthaginians heard this final demand they realized they had been tricked. In one of history's greatest acts of perfidy. Wild with grief and anger, they tore limb from limb the leaders who had urged appeasement and frantically sought to rebuild their defenses. In two months, while the Romans massed their forces, they produced 8,000 shields, 18,000 swords, 30,000 spears, 60,000 catapult missiles and a new fleet of 120 ships. But it was too little and too

late. Following a bitter siege of three years, the Roman armies broke through the walls and nearly the whole population of Carthage perished by the sword. The city was then razed to the ground and the soil was sown with salt. The destruction was as complete as might be the most devastating nuclear attack of today's world.

MODERN PARALLELS

Historical analogies are never exact, of course, but the lessons they teach about the attitudes of men and government are instructive. The America of today would do especially well to pay some attention to the sad story of Carthage. Because if we do not soon come to our senses we will be well on the way toward a rerun, with ourselves this time cast in the unfamiliar role of the victims.

Cato called for the destruction of Carthage because he saw that it was regaining its prosperity after its earlier defeat under the great Hannibal, who had invaded Italy and had very nearly conquered Rome itself. Cato believed that the world of his day could not accommodate two strong antagonistic powers, and that Carthage would again become a military threat to Rome if left unchecked. Therefore, he persuaded his countrymen to launch a preventive war.

In reality, the people of Carthage had no further imperial ambitions. They wished only to be left in peace to develop trade and commerce and pursue their "domestic priorities." They must have been well aware of Cato's exhortations and of the developing Roman attitude, but they did little to prepare for war, hoping thereby not to provoke the Romans. When the prospect of war nevertheless became immediate, they sought to avert it by the most abject appeasement, including submission to total disarmament. When this policy was unsuccessful they chose to fight rather than surrender but by then their resources were hopelessly inadequate to the task. The result was that they, as well as their city, perished forever.

For more than 25 years, since the U.S. and the U.S.S.R. became the two predominant world powers, we have heard the Soviet equivalents of Cato proclaim the undying "conflict of social systems" in which they have sworn that their system will emerge as the victor. Desiring no conflict of any kind ourselves, and wishing only a live and let live arrangement with our adversaries, we have allowed ourselves to be comforted by Soviet assurances that war is not necessary to the triumph of their system. And we have been generally content to leave in slavery those who have fallen victim to their system in order not to appear "provocative."

At the same time, we have listened to our own philosophers assuring us that nuclear weapons have rendered war "unthinkable" because it is supposedly, "unwinnable." Thus bemused, we have watched, with apparent lack of official or popular concern, as the overwhelming military superiority which we once enjoyed over our enemies has ever more rapidly melted away. That superiority, with official blessing, has given way to what is now called "sufficiency."

Whether or not the Soviet Union is now operating upon some Hitlerian timetable leading up to an actual attack upon the United States, in order to remove us once and for all as a military rival, is debatable. Quite possibly no decision has yet been made that this is necessary—not yet.

What does seem certain beyond reasonable doubt is that a period of almost unimaginable danger, not a "generation of peace," lies ahead of this country. This stems from a combination of two factors. One is the political rot and erosion that is sweeping almost completely through what was once known as the "free world." The other is the rapidly

accelerating momentum of the Soviet strategic military buildup.

A RUSSIAN AIRCRAFT CARRIER? THE IMPLICATIONS ARE OMINOUS

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. BOB WILSON. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following editorial from the Los Angeles Times:

[From the Los Angeles Times, Mar. 17, 1972]

A RUSSIAN AIRCRAFT CARRIER? THE IMPLICATIONS ARE OMINOUS

(By Robert S. Elegant)

MUNICH.—The Soviet Union is building a very large ship in its Black Sea shipyard at Nikolayev, which has during the past five years completed the helicopter assault-and-antisubmarine carriers Leningrad and Moskva.

The new ship poses both a riddle and a challenge. It might be simply a large tanker or passenger ship. It could be another helicopter carrier, though its estimated size of more than 30,000 tons would be unprecedented—and counter-productively—large for that function. But the chances are strong that the Russians are building their first conventional aircraft carrier, though intelligence cannot confirm that conclusion.

If the hull under construction is an aircraft carrier, its significance would exceed by far the metal, electronic gear, aircraft and highly trained air crews, whose cost will be at least \$500 million and, perhaps, twice that figure. The United States, Britain and other Western powers would still deploy many times that number of carriers. But a Soviet carrier would, in the long run, affect the world balance of power.

Since the weight of the evidence indicates that the mysterious hull is an aircraft carrier, non-Soviet strategists must proceed on that assumption. Her construction would indicate, first, that the Soviet Union has taken the fundamental decision to alter its previous policy of relying upon shore-based aircraft to support naval activities and upon submarines for long-range operations. Building an aircraft carrier, even as a pilot model for more and bigger carriers, would mean that the Russians are preparing to back their bid for world influence with hardware—and much hard cash.

Above all, building a carrier would demonstrate that the Soviet Union has, however tentatively, reversed its previous ingrained objection to aircraft carriers as "bourgeois, imperialist weapons."

Once again Moscow would be reaching far outward for power. Perhaps First Secretary Leonid Brezhnev of the Party would use a carrier as a bargaining counter in his long-term effort to win agreement on naval parity with the West. But even a single carrier is a fearsomely expensive chip in the international poker game—and admirals are notoriously reluctant to surrender advantages once gained.

Taken together with intensive Russian research into vertical and short take off and landing aircraft, a new carrier would pose a threat of Soviet expansion into areas where Moscow has previously been weak or even unable to deploy armed force. Moscow doesn't need carriers to maintain its influence in the Mediterranean, since it already possesses many air fields around the perimeter. Moscow does need carriers to operate effectively in the Atlantic and, above all, in Asia.

From the Indian Ocean to Australia to the Pacific, Russian carriers could temporarily or permanently, establish naval superiority over medium-sized or large areas. The consequent command of the sea could exert tremendous political influence.

The curious feature of command of the sea is that you either possess it or you don't. If you do, you needn't fight to dominate shipping and commerce in an area. If you don't, fighting won't do much good.

In Southeast Asia, the Kremlin wishes to contain Chinese influence which does not now assert itself through naval force and is unlikely to do so in the foreseeable future. Nonetheless, Russian naval power can exercise the strongest counter-influence throughout the area.

In the Far East, as also in Southeast Asia, the Russians could find themselves either working against or cooperating with Japan, which must, in the long run revert to naval power to assert new influence and to protect her lines of communication. The countries of the area, already deeply worried by Japanese commercial domination, are becoming vitally concerned about Japan's future military power. Russian naval expansion, sustained by new naval air power could either serve as a counterweight or be cast decisively onto the same side of the scales as Japanese power. In either case, Russian influence would increase enormously.

A carrier force could, thus, enable Moscow to retrieve certain present disadvantages in the world power struggle. The Kremlin could either "scale up" its carrier force in both size and numbers of "trade off" all or a portion for agreements with the non-Communist powers.

At the very least, the construction of a carrier force would enable the Kremlin to keep all its options wide open over a long period of time—albeit at a very high cost.

NATION TO CENTER ON PEVELY, MO.

HON. RICHARD H. ICHORD

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. ICHORD. Mr. Speaker, the population center of this country has always been located east of the Mississippi River. However, various research organizations now tell us that based on projected population growth during the 1970's the center of population in this Nation will creep across the Mississippi and be located close to Pevely, Mo., by 1980.

Mr. Speaker, Pevely, Mo., which is in Jefferson County, is in the congressional district which I serve at the present time. I call attention to this fact because this shift clearly points to the fact that Missouri and, especially, such counties as Jefferson are growing and thriving.

At this point, I would like to insert in the RECORD for the consideration of all the Members the Associated Press story on the shift of the center of the Nation to Pevely:

[From the Springfield (Mo.) Leader-Press, Feb. 11, 1972]

NATION TO CENTER ON PEVELY

KANSAS CITY.—The nation's population center continues its movement west during the decade of the 1970s and will creep across the Mississippi River for the first time in

1980, a financial firm's research department said today.

Based on its estimates of the 1980 Census and patterns of growth, the research group predicted the nation's demographic center will be near Pevely, Mo., located about 25 miles south of St. Louis and six miles west of the Mississippi River.

Pevely is about 35 miles southwest of Mascoutah, Ill., the 1970 population center.

The projection was made by the research department of Waddell & Reed, Inc., a Kansas City-based national financial services complex.

"It is more than a mere titular honor for a place to be pinpointed as the population center of the country," said William A. Reasoner, the firm's president and chief executive officer.

"It is also an indication of the real growth potential for the surrounding area. Pevely, for example, is located in a region that is expected to grow significantly during the rest of this decade as St. Louis suburban development radiates outward," Reasoner said.

The nation's population center has moved westward steadily since the first census, conducted in 1790, placed the demographic center near Chestertown, Md., 23 miles east of Baltimore.

MODEST HERO SAVES CHILDREN'S LIVES

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. McKINNEY. Mr. Speaker, last week in Stamford, Conn., 33 families were left homeless, victims of a disastrous fire which swept their neighborhood. Out of this tragedy, a modest man emerged a hero. Had he not acted as he did, seven children might not be alive today. That man is Ray Mitchell who rescued the seven children from one of the burning buildings. He came away with his hair singed and, as the Stamford Advocate has noted, his modesty intact. Mr. Speaker, I believe that Mr. Mitchell deserves the commendation of the Members of this House. At this point in the RECORD, I would like to insert Advocate reporter Bob Masullo's account of Mr. Mitchell's heroics:

SEVEN SMALL CHILDREN OWE LIVES TO MODEST HERO

(By Bob Masullo)

Forty-nine-year-old Roy Mitchell came out of Monday night's West Side fire, which destroyed four black ghetto tenements, with his hair singed and his modesty intact.

Because of his actions, seven small children are alive today who otherwise might have died in the fire.

However, on Monday night at the Red Cross emergency room in the West Main St. Community Center, where he registered for aid along with other victims of the fire, he said nothing of his deeds, even when asked by a reporter for his account of the event.

An adult daughter, Miss Brenda Mitchell of 213 Selleck St., gave the following account Tuesday of what her father did at the fire:

"He was babysitting for seven children in the apartment of Mrs. Mozzel Person (apartment number six in 5 Roe Park Ave.). The children were in a bedroom and my father was sitting on the porch when the fire started.

"Two-year-old Brenda Williams came out on the porch all upset. She could not talk, but he knew something was wrong from the way she was acting.

"He went inside and the fire was all around. So he rounded up all the children and got them outside as fast as he could. (The apartment was on the ground floor).

"When he got outside one of the kids (Eugenia Person, 6) told him, 'The baby is still inside.'

"He ran back in, although the fire was already very bad, and got the baby (German Williams, 7 months) and brought her outside to safety. That's how he got his hair singed, when he ran back in."

Miss Mitchell identified the other children as James Hussel, 5; Reginald Person, 5; Kim-ley Robertson, 6, and Jacqueline Hussel, 2.

According to Miss Mitchell, the Williams children are grandchildren of Mr. Mitchell: the Robertson child is Mr. Mitchell's godchild; the Person children are the grandchildren of Mrs. Person, and the Hussel children are related to Mrs. Person.

ENVIRONMENTAL ZEAL HAS OUTRUN COMMONSENSE

HON. CHET HOLIFIELD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HOLIFIELD. Mr. Speaker, the people of California will be faced with an initiative measure on their June 6 primary ballot. The measure is proposition No. 9 and it is titled "The Clean Environment Act of 1972." This measure has been placed on the ballot by a group that have named their organization the People's Lobby.

Because of the attractive title "Clean Environment Act" people may confuse the contents of the bottle with its attractive label. I trust this will not occur and do not believe it will occur if the general public really understands the dangerous provisions in the act.

Proposition No. 9 is a perfect example of environmental zeal having outrun commonsense and reality. It cloaks the most harsh and unconstitutional provisions under a pious title.

Briefly, the proposition would close down all industrial and home sources of any air pollutant for at least half of each year. No one is permitted a hearing and no court may intervene—in other words, due process of law is denied.

The 20 million people of California are to be denied an adequate supply of electricity for a period of from 5 to 12 years through a moratorium on the construction of new pollution-free nuclear powered generating plants.

Most of the proven and effective insecticides, pesticides, and herbicides are to be outlawed in spite of the fact that known substitutes are more dangerous to man than those to be outlawed.

Most of what the proposition demands is impossible, the remainder is ridiculous.

I have said before and I restate again, "If this act passes, it would drive most of California's business out of the State or into bankruptcy." The people of California are literally being "propositioned" down a primrose path to economic ruin.

The people of California are being asked to vote upon a proposition which will have a lasting and drastic effect upon their own lives and the future of the State.

They are being asked to exchange their jobs, economic well-being, convenience, and some of their constitutional rights for the false hope that this measure will bring about a clean environment.

The people should not make this choice without fully understanding the contents of the initiative. It is doubtful that the 500,000 citizens who signed the petition to place this measure on the ballot had the slightest idea as to its real contents. And since the very long initiative will have to be explained on the ballot in very terse terms, the voters will not know of its contents on election day.

The Congress has enacted the Environmental Policy Act and created the Environmental Protection Agency to enforce that act. The Clean Air Acts of 1967 and 1970, along with clean water legislation which will soon be passed, are forward-looking laws which rightly take into account the technology and availability of economic support—taxes and profits—to support an antipollution effort. The California Legislature has, following many hours of hearings and debate, passed numerous antipollution laws. These laws are very strict but also take into consideration what is possible.

The initiative was apparently drafted without the benefit of legal or scientific expertise. Its terms do not reflect the sober deliberation found in laws enacted under the legislative process.

If there, in fact, was deliberation it appears to be aimed solely at the destruction of the industrial and agricultural base upon which 8,721,000 workers must depend for a livelihood. In 1971, more than 600,000 people were unemployed in California. More than 100,000 other persons had given up, and dropped out of the labor force. The employment picture will not be much better in 1972.

The imposition of this ill-conceived law will, without doubt, drive most of California's business and industry out of the State or into bankruptcy. Already financially depressed county and city governments will also be bankrupted. No tax revenues would be available to retain the services of many of the 1,137,000 State and local government employees.

Stated simply, the imposition of this law would result in the greatest depression California has ever experienced.

Further, the initiative would not halt pollution. It is aimed at the source of only 15 percent of total air pollution, and ignores the cause of 85 percent—the automobile.

Little is known about the leadership or membership of the organization which originated the initiative. Whoever they are, it must be said that they are insensitive to the basic needs of those in our State who must live on fixed and low or moderate incomes.

Perhaps the members of that organization can afford the extremely high prices of food grown on organic farms. Perhaps their resources will allow them to move and seek employment in an-

other State. And perhaps their standard of living needs no improvement. But this is not the happy lot of the many people who would bear the greatest burdens—the loss of jobs and higher prices.

No one will disagree that the problems of pollution abatement must be met head on and solved. However, we have a choice of methods. We can seek solutions within the realm of the "real world" where technology and the economy permit; or we can follow the approach of the so-called Clean Environment Act and strike out blindly.

Every thinking voter should reject the initiative and urge their elected and appointed officials to proceed with all possible speed on the course of reason.

I append to my remarks an excellent editorial printed in the Los Angeles Times on March 12, 1972, on this measure, proposition No. 9:

WRONG WAY TO CLEAN UP THE AIR

It's called the Clean Environment Act, a title of such respectability and promise that hundreds of thousands of Californians were glad to sign petitions to put it on the ballot. It will go to the voters next June 6, as Proposition 9.

It is being touted as a comprehensive assault on pollution. It is in fact a slapdash and deceptive measure which, if enacted, would probably increase air pollution, disrupt control procedures, and cost the people of California untold millions in unnecessary expenses and penalties.

Begin with air pollution. The thrust of Proposition 9 is to set highly technical and rigid standards for the sulfur content of diesel fuel and the lead content of gasoline. Now as it happens neither of these elements contributes in any significant way to photochemical smog, which is the main air pollution concern in Southern California. Both are pollutants, to be sure; what the proposed legislation disregards is the actual extent of pollution involved, the variations in the problem from area to area, and the costs to consumers of eliminating the contaminants.

Consider sulfur oxides, which definitely are not a good thing to have around. These come mainly from the burning of fossil fuels, like coal and oil, that contain sulfur. The primary sources are stationary sites—power plants and the like. Yet Proposition 9 would drastically reduce the sulfur content only of diesel fuel sold trucks, busses and cars.

The relevancy of the assault on sulfur in diesel fuel aside, there is the serious question of practicality. Refineries can be built to produce low-sulfur diesel fuel, but the oil industry says this would take at least two years and a huge capital investment. The oil industry, to be sure, is not the most objective source when it comes to questions of air pollution caused by fossil fuels. But the fact remains that enactment of this proposed law could threaten a major disruption of transportation in California and mean added costs for goods to all consumers. And for a purpose whose necessity is by no means evident.

Then there is leaded gasoline. Lead does have to be taken out of gasoline, chiefly so smog control devices can work properly. Proposition 9 says that after July 1, 1976 no more leaded gasoline could be sold in California. What it doesn't say is what will happen to the millions of pre-1971 cars that will still be on the road then which require leaded gasoline to run efficiently. It doesn't say what it would cost motorists to convert their older cars to run on lead-free gasoline, if converters were available. And it ignores the federal government's sensible timetable for phasing out leaded gasoline, an action that makes the proposed ban of doubtful legality.

Proposition 9 would make it unlawful to build nuclear power plants anywhere in the state for the next five years. Period. It takes no note of the state's constantly growing electricity energy needs, which include the need for power to help clean up the environment. What it does do is invite the further construction of fossil fuel power plants to help fill the energy gap that nuclear-generated power plants should be filling. That would mean putting into our air the contaminants that nuclear plants spare us, including those same sulfur oxides that the restriction on diesel fuel pretends to attack! It makes no sense at all.

The measure would also ban the letting of new leases or renewal of existing ones for oil or gas drilling along the coast, from three miles offshore to one mile inland. While we also oppose offshore oil exploration and drilling near the coastline, we can see no sound reason for extending the ban one mile inland.

The proposition provides for penalties for violations of any air pollution laws. The penalty is a fine of 4% of the gross income for the previous year for any person or company guilty of a violation. The penalty could be levied every day until the violation is corrected. As Norman Livermore, secretary of the State Resources Agency, has noted, this could apply even to a motorist "whose car smokes too much." We believe polluters should be penalized. But the sledgehammer, inflexible approach of Proposition 9 is not the way.

There is more in this initiative that is of doubtful utility, wisdom and legality. In the area of air pollution its provisions, if enacted, seriously threaten to add to our problems rather than to alleviate them. That one fact alone is sufficient to require the defeat of this proposal.

No doubt the motivation and chief appeal of this initiative has been frustration, the feeling that special interests have succeeded in inhibiting enactment or enforcement of necessary environmental protection laws, that local air pollution control boards have not been vigorous enough in cracking down on polluters, that there has not been a strong enough sense of urgency on the part of officials to environmental threats to public health. There is more than a little truth in this, as we have noted often before.

But bad law is not the solution, and that's what Proposition 9 would be. It would, if passed, trigger legal challenges and court fights that could go on for years, and worse, could lead in the meantime to a halt in further necessary steps to combat pollution. That wouldn't help the cause of environmental clean-up, and it wouldn't help the people of California. Proposition 9 should be defeated.

GOOD ADVICE FOR ALL AMERICANS

HON. LOUIS C. WYMAN

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. WYMAN. Mr. Speaker, once again the Warner and Swazey Co. in an advertisement appearing in the current issue of the U.S. News & World Report offers sound advice to all Americans. Essentially, the message is to try a little harder.

This is so true. If each of us would only put a little more effort into making the daily lives of someone else a little better, there is no telling what could happen. It just might become that better

America to which we all aspire. The ad follows:

TRY SAYING "GOOD MORNING" AS THOUGH YOU REALLY MEANT IT

Then (tomorrow, say) try treating some teen-ager like an adult.

Find someone to praise for doing a good job—waitress, bus driver, newsboy, store clerk, anyone.

Show respect for an older person's experience (or fortitude).

Be patient with someone who doesn't understand as quickly as you do.

Write or phone someone having a difficult time. Say you know it's rough, but you have faith in him.

Look pleasant.

If you're white, go out of your way to be polite to a black man or woman; if you're black, to a white.

Do your job a little better. Maybe you'll get some praise, but certainly you'll get more satisfaction.

Help someone—a cripple across a street, a young man or woman looking for a job (whether you can give it or not, give him hope) or an older one, discouraged in his.

Contribute to some church or charity—money if you can, time if you can't.

It just could be that this sort of understanding is what this country needs right now. Try it tomorrow—all day tomorrow. You might be surprised!

PAUL C. ALLEN

HON. MARTHA W. GRIFFITHS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRIFFITHS. Mr. Speaker, at this time, I would like to insert in the RECORD the story of one of Michigan's outstanding labor leaders, Paul C. Allen. His efforts in the early days of union growth and his long-time service with Riggers and Machinery Erectors Local 575 stand as tribute to the men and women of America's labor movement. The story, which was printed in the program of a testimonial dinner recently given in his honor, follows for everyone to read:

PAUL C. ALLEN

Riggers and Machinery Erectors Local 575 is a small local union by most standards. It has less than 1,000 members and its jurisdiction covers only a very small part of the labor movement.

But, this local's members enjoy a high standard of living through the good wages and fringe benefits that have been negotiated for them by their union.

If you asked the members how this happens to be, you'd get the same answer from all of them. It's the same answer you'd get from the old-timer of the union scene, the so-called "pros" of the business of representing people. They all say:

"Paul C. Allen."

There is no doubt that Paul Allen has made all this possible.

Once a big burly man, rough and ready to fight for what he believed was right for the working man and coming up in an area when this was necessary, Paul was seen on many a picket line in the 30's when unions were making their greatest organizing efforts.

Born in Wabash, Ind., Oct. 8, 1915, the youngest of three children of Paul Allen and his wife Julie Bramble Allen, he watched his dad who was a railroad man and inherited

his union-mindedness. Upon graduation from high school, he came to Michigan in 1927.

He joined and was initiated in Riggers Local 575 Nov. 1, 1937, which was then under the supervision of the International Union and in 1938 he was elected the first president of the union.

He negotiated the first collective bargaining agreement and has negotiated every contract since, having set a precedent for the Building and Construction Trades with the Riggers being the first union to include Health and Welfare benefits in their contracts.

In 1941 he was elected a Business Agent and for a time was General Organizer for the International Association of Bridge, Structural and Ornamental Iron Workers. He is now Business Manager of Local 575, having been re-elected to the post without opposition for 23 years. He has also served as President of the Iron Workers District Council of Michigan and Vicinity since 1960.

Local 575 is regarded as one of the most efficiently operated union organizations in America. The union has its own headquarters in Union Center, 14333 Livernois, modern complex which is a far cry from the one-room office on the third floor of a building on Erskine where the union started more than 35 years ago.

The building houses optical and dental care facilities, a doctor's office and a credit union—all provided without cost to the members. The union owns and makes beds available to members at the McNamara Hospital in Warren. It awards two scholarships annually. It has two recreation and retirement centers, a "Sunrise Village" at Marathon, Fla., and another at Leonard, Michigan and was even negotiating for a cemetery.

"We owe it to our members," said Paul, "to protect them on and off the job . . . from cradle to casket."

A supplemental pension plan, unequalled anywhere in the labor movement, has added a degree of financial security and dignity to the entire membership, young and old alike.

Those are the bare facts of the things that can be directly attributed to his leadership and foresight. Looking closer at Paul Allen, you see a very humane man who very rarely wears a tie and who more than likely will be puffing a cigar while he talks to you.

He is a dedicated family man with a wonderful wife, Ruth, and three sons and a daughter.

Believing strongly in the rights of the individual, Paul saw the grave injustice in the conviction of his friend, Jimmy Hoffa and he stood by, working diligently throughout the long fight for his release. And, Paul would do this for other friends.

He found out for himself that he had a multitude of friends when just a little over a year ago he lost his vision. When he regained his sight through what he termed "a miracle of God and medical science," he wrote in his column in *HARD HAT*, the local's widely-read newspaper, "I have learned a lot about my friends. I have discovered there are a lot of wonderful people. They probably have always been there, but I suppose I never really appreciated them. . . until now."

He paid particular tribute to his wife Ruth, who he married in 1952 and who he said, "above all others, was there at all times, reading to me the many, many pages of material that I have these many years as a union leader had to read and digest so that we could act in the best interests of the members."

And, much as he has done all along the way, he looked to the future, saying, "Now we can go on with our programs for the members. Believe me, the future looks brighter than ever . . . I can see it does!"

DRUG ABUSE: THE PEOPLE MUST ACT

HON. ROBERT PRICE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. PRICE of Texas. Mr. Speaker, America does not have a drug problem. What we have is a people problem. Drugs have been around for centuries and have essentially changed very little. But what has changed is the climate, acceptability and hunger within large segments of our society for these kinds of products. Turning on with drugs has in the past decade become fashionable, in some circles even respectable, and for many an acceptable way of thumbing their noses at the government and society. We are, in fact, in the midst of a drug culture that is threatening the very future of our society if we do not act swiftly and forcefully to bring it under control.

We are constantly being told by some experts that drug abuse is a symptom of a sick society and that it is hardly surprising that people are seeking to escape through drugs from a world full of so many complicated problems. When I hear this kind of talk, I wonder how many young people will be persuaded by these words that they are predestined to become junkies and speed freaks. What the experts ought to be telling us is that the drug abuser is an individual with a basic character weakness. He cannot face up to stress and expects ready, instant answers; when the easy answers are not available he has to escape through artificial means. Drug abuse must be separated from the other problems of our society, not viewed as a symptom of those other problems. In the end it is really not that complicated—either you use drugs or you do not. What we need is to spend more time teaching our children how to deal with problems, not how to avoid or escape them.

There are also some people who would argue that every individual has the right to use his body as he chooses and that the drug abuser is not hurting anyone but himself. Frankly, I find this unacceptable. Everyone whose life is touched by the addict—his family, his friends—suffers because of his habit. And, of course the ultimate victim is society as a whole, which must shoulder the expense of his treatment, his lack of productivity, and the crime to which he eventually must turn to support his habit. The addict also contributes to the ongoing activities of organized crime, for it is this group which reaps the profits of his expensive habit. Furthermore, drug abuse is infectious; friends and associates are often the means through which drugs are introduced to still more people. The truth is that the drug abuser does not exist in isolation, and his actions are exacting a terrible toll on society.

But despite all the harm that drug abusers themselves cause, none of their offenses are as great as those of the pusher—the individual who makes a

profit by exploiting the weakness of others. These men are vultures in our society, feeding on the curse of drug abuse. All of our law enforcement agencies must be mobilized to bear down on them and their activities; they deserve no mercy. I can think of no penalty too severe for those who deal in the narcotics traffic, for they are killers on the installment plan. We must be relentless in our effort to halt the traffic in illicit drugs and to severely punish those who make their livelihood from it. And not only must we deal severely with individuals involved in this illegal traffic, but we also must deal strictly with any nation—be it France, Thailand, or any other—which does not cooperate with our effort to halt the production and traffic in illicit narcotics. Strict economic and diplomatic sanctions must be applied against such nations.

Still another group of people who are causing a great deal of uproar these days are those who call for the legalization of marihuana or for the lifting of penalties for its use. We have been subjected to endless arguments as to whether marihuana is harmful and whether it is better or worse than alcohol, but no one has come up with any certain answers. The Commission on Marihuana will be reporting imminently, and I can only hope that we will not be hearing more unsubstantiated claims that marihuana is really not very harmful and therefore we ought to be more lenient regarding its use. The plain truth is that marihuana is a drug, and the warning signals that it may be harmful are numerous. The recent "Marihuana and Health" report issued by the National Institute of Mental Health pointed out that marihuana can provoke psychotic episodes in unstable individuals, impair driving ability, and may cause other serious effects about which little is known. Dr. William E. Bunney, Director of NIMH's Division of Narcotic Addiction and Drug Abuse, stated that the effect of heavy use of marihuana over long periods of time is "one of the biggest question marks." And Dr. Bertram S. Brown, Director of NIMH, commented that "the current state of scientific and medical evidence" does not justify making the use of marihuana legal. We certainly do not need another socially approved intoxicant, and the use of marihuana ought to be vigorously discouraged, at least until we have more knowledge concerning its effects.

One of the most important things I have learned from my vantage point as a Representative is that people spend for too much time talking about drug abuse instead of taking action to eradicate it. They talk about the drugs that are being abused, the bizarre effects that they have, and why people take them. Everyone is alarmed and shocked, but they just shake their heads, substitute talk for action, and sit back and depend on Congress to enact legislation. This is ridiculous. With drugs as with so many of the other problems which face us, we must have more than concern, more than rhetoric, and more than legislation; if we are to survive we must have action, and that ac-

tion must come from an alert and concerned American public which is determined to eradicate this curse from our land.

ST. PATRICK'S DAY PROGRAM

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. BIAGGI. Mr. Speaker, when St. Patrick's Day comes around each year, every American becomes a "Friendly Son of Erin." We are all aware of the torments taking place today in northern Ireland. But beyond these troubles we should also take note of the genius of Irish culture and civilization to which America owes so much.

I feel especially privileged to bring to the attention of my colleagues the work of the Irish-American Cultural Institute, the premier international Irish organization and publishers of Eire-Ireland, the quarterly journal of Irish studies. The IACI is the first and only national and international organization in the United States devoted exclusively to promoting the culture of Ireland, past and present. It is not a social, fraternal, or a religious organization. It promotes no causes but the cause of Irish culture: the whole of national intellectual and cultural life. The IACI's board of directors and national council include members from across the United States and from Ireland. Honorary cochairmen of the institute are HSH Princess Grace of Monaco and Mr. I. A. O'Shaughnessy, St. Paul, Minn.

This week, Mr. Speaker, the IACI is presenting the Catholic University of America the Washington Irish Fortnight, a unique concentration in Irish culture. The program will run through March 27. Distinguished cultural leaders, scholars, musicians, and authors have been brought from Ireland for this cooperative international venture with prominent Americans.

The program consists of illustrated and regular lectures, performances, and demonstrations. An array of scholarly and creative talent focuses on various facets of Irish culture and civilization—art, music, archeology, literature, and history.

I would like to add that the undergraduate student government and the graduate student association of the Catholic University of America are co-sponsoring the Washington area Irish Fortnight on behalf of Catholic University, in recognition of the university's long association with the promotion of Irish culture.

In 1896, a few years after the university's founding, an endowed Chair of Celtic was established. This has provided for perpetual research and teaching in Celtic at the Catholic University. For the more than 70 years since the Ancient Order of Hibernians endowed the Celtic Chair, many of America's foremost Irish scholars have worked in

the university's division of Celtic studies. They have provided leadership for research in the intellectual and cultural world, and have brought home to the academic community and to the public the value and meaning of Irish civilization.

It should also be noted, Mr. Speaker, that the IACI is presenting the Irish Fortnight in St. Paul, Minn., and in Seton Hall University, Newark. In recognition of the extraordinary contributions which the institute is making to our culture the Senate of the State of New Jersey recently adopted a resolution commending its president, Dr. Eoin McKiernan.

Mr. Speaker, because I am so deeply appreciative of the institute's work and because I know that our colleagues will want to hear about the Irish Fortnight I include in my remarks the program of the Washington Irish Fortnight:

FRIDAY, MARCH 17

Maloney Hall—8:00 p.m.

Film Short: The Art of the Celtic High Cross.

Lecture: "Gods of the Gaels"; Liam Gogan, Formerly Deputy-Keeper of Irish Antiquities in the National Museum of Ireland (Dublin).

Chairman and Commentator: Louis J. Lutzbetak, SVD, Ph.D., Executive Director of CARA

SATURDAY, MARCH 18

Maloney Hall—8:00 p.m.

Lecture: "What Makes An Irishman Laugh?"; Tony Butler, Critic for the Evening Press (Dublin).

Chairman and Commentator: Art Buchwald, Syndicated Columnist (The Washington Post).

SUNDAY, MARCH 19

Caldwell Hall—2:30 p.m.

Lecture: "The First Irish in Eighteenth Century America"; Thomas Hanley, S.J., Ph.D., Editor of the Carroll papers for the Maryland Historical Society and the American Catholic Historical Association.

Chairman: Al. Philip Kane, Esq., Washington, D.C.

Caldwell Hall—4:00 p.m.

Lecture: "Feeling In Irish Poetry"; Eoin McKiernan, Ph.D., Litt.D., President, Irish American Cultural Institute.

Chairman: Rev. Gilbert Hartke, OP, Head, Department of Speech and Drama, Catholic University.

SUNDAY, MARCH 26

Caldwell Hall—2:30 p.m.

Lecture: "Anglo-Irish Sensibility—From the Eighteenth Century to Today"; Alec Reid, Irish author and interpreter of Beckett.

Chairwoman: Sr. Anne Francis Cavanaugh, RSM, Ph.D. Superior General, Sisters of Mercy of Eire.

Caldwell Hall—4:00 p.m.

Lecture: "An American-Irish Sensibility—The Art of Flannery O'Connor"; Riley Hughes, Founder and Director, Georgetown University Writers Conference.

Chairwoman and Commentator: Mrs. Eugene J. McCarthy, author; Vice-President, Church Women United.

MONDAY, MARCH 27

Caldwell Hall—8:00 p.m.

Film Short: Megalithic Monuments of Ireland.

Lecture: "Revelations from Irish Archaeology"; M. J. O'Kelly, Archaeologist, U. C. Cork.

Chairman: Courts Oulahan, Secretary-Treasurer, Society for the Preservation of Historic Ireland.

McMahon Hall—9:30 p.m.

Lecture and Demonstration: "Traditional Irish Pipe Tunes"; Paddy Maloney, Managing Director of Claddagh Records.

Chairwoman: Barbara Murphy, Coordinator Fortnight Music Committee.

FRIDAY, MARCH 24

Maloney Hall—8:00 p.m.

Lecture: "Irish Nationalism: The Impress of History"; Donal Macartney, Lecturer in Modern Irish History, University College, Dublin.

Chairman and Commentator: Carroll Quigley, Ph. D., Historian; author of Tragedy and Hope, A History of the World in Our Times.

Maloney Hall—9:30 p.m.

Lecture: "III. The Irish Character: The Welding of Cultures"; Sean O Tuama.

Chairman and Commentator: Riley Hughes, Ph.D., Founder and Director, Georgetown University Writers Conference.

SATURDAY, MARCH 25

Caldwell Hall—8:00 p.m.

Lecture: "Irish Nationalism: The Amalgam of Forces"; Donal Macartney.

Chairman and Commentator: James Kirwan (Counsellor), Press and Information, Embassy of Ireland.

MONDAY, MARCH 20

Caldwell Hall—8:00 p.m.

Performance: Irish Folk Music; Sung and played by Tomas O. Canaann Trio; (Matt Cranitch, Tom Barry), award-winning group in all-Ireland music festivals.

TUESDAY, MARCH 21

McMahon Hall—8:00 p.m.

Lecture: "Jack B. Yeats: Ireland's Foremost Emerging Painter?"; James White, Director, National Gallery of Art, Dublin.

Chairman: H. E. William Warnock, Ambassador of Ireland.

WEDNESDAY, MARCH 22

Caldwell Hall—8:00 p.m.

Lecture: "I. The Irish Character: The Historical Revelation"; Sean O Tuama, Ph.D., Premier author and poet in Gaelic and in English.

Chairman: The Honorable, Mario Biaggi, M.C.

Caldwell Hall—9:30 p.m.

Lecture: "The State of Celtic Studies in America"; Robert Meyer, Ph.D., Chairman, Celtic Department, Catholic University.

Chairman: Robert Lado, Ph.D., Director, Department of Languages and Linguistics, Georgetown University.

THURSDAY, MARCH 23

McMahon Hall—8:00 p.m.

Lecture: "II. The Irish Character: The Internal Contradictions"; Sean O Tuama.

Chairman: The Honorable, William Taft, former Ambassador to Ireland.

SPACE IS OUR NEW FRONTIER

HON. DON FUQUA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. FUQUA. Mr. Speaker, the outstanding gentleman from Texas, the Honorable OLIN E. TEAQUE, was recently quoted in the Wednesday, March 1, 1972, edition of the Eagle of Bryan-College

Station, Tex. This editorial discussing the 10 years since the epic flight of John Glenn, the first American to orbit the earth, quotes "TIGER" TEAGUE on our national space effort. I could say little to improve upon either the editorial or my friend's and colleague's words. The editorial follows:

SPACE IS OUR NEW FRONTIER

Ten years ago, John Glenn stirred the hearts of Americans as he made this nation's first orbits of the earth. For almost five hours, Glenn held much of the world's attention as he overcame problems to complete his mission.

Now, an incredibly swift decade later, the Moon Era is drawing to a close. The ultimate goal of Glenn's flight was to put a man on the moon. Next December Apollo 17 will make America's last scheduled manned landing. Apollo 16 will touch down this spring.

Public attention remained riveted on successive space spectacles which developed the men and hardware for the moon. When Neil Armstrong and Buzz Aldrin landed the Eagle of Apollo 11 on the moon in 1969, the world watched. Since then, interest and funding have fallen drastically.

In 1971, \$3 billion was spent on space research and development. This represented a small fraction of our total federal expenditure. In the ten years since the space program was initiated, the program has contributed to opening new frontiers in technology and science.

But the broad questions that have been raised focus on the issue as to why we should be in space at all. With our massive domestic problems would we not have been better off waiting, until these problems had at least been gotten in hand.

In a recent interview, U.S. Rep. Olin Teague stated "...there was plenty to be done in Europe when Columbus first sailed. If Columbus had waited until Europe had no more internal problems, he would still be waiting."

And Teague could just as easily have added other names to the list—names which stand out in history as representing the finest efforts of man to open new frontiers. Those names would include Darwin, Marco Polo, Eric the Red, Dewey, Livingston, Rogers, Magellan, and ad infinitum. These names were grabbed at random. Some went in peace, some to conquer, some for trade, some with scientific problems to research.

These men in their time moved forward into new worlds—and those new worlds today are part of our everyday life.

It is fact that the only new worlds left today are out in space. And because man is both inquisitive and acquisitive, the urge to explore must be tempered by the need to maintain global balances. We can not forget that Russia is very much in space.

As Teague said..."only so long as the United States is a major space power will the FREE use of space be available to mankind. Space today is the high ground militarily. To abrogate the field to a potential enemy is to court disaster."

History teaches us that point very well.

UNEMPLOYMENT: THE TRUTH OF THE MATTER

HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. ABZUG. Mr. Speaker, a recent article on the editorial page of the Wash-

ington Post is an extremely cogent articulation of the problem of unemployment among various groups in our economy—especially women. I am including the article in the RECORD for the edification of my colleagues:

UNEMPLOYMENT AS AN ISSUE IN THE ELECTION

(By Alice M. Rivlin)

One might have expected unemployment to be among the simplest and most comprehensible issues of the election campaign. A high unemployment rate means that the economic machinery is not functioning properly, right? That's bad for the incumbents, because they are in charge of keeping the machine running. What could be simpler than that?

But to no one's surprise the administration does not see it this way and has launched a multi-pronged verbal onslaught designed to diffuse the unemployment issue and make it a lot more complicated. The administration's argument reminds one of the old story about the man who returns a borrowed pot to the owner with the statement: I deny that it is broken; anyway, it is not my fault, because it was already broken when you gave it to me; and furthermore I've done everything I could to fix it. The administration's line on unemployment goes something like this: (1) unemployment is not as serious a problem as it might seem because many of the unemployed are women and young people; (2) anyway, unemployment is not our fault, because it was a necessary consequence of winding down the war; and (3) we are doing everything either we or the Democrats can think of to fix it up.

Administration spokesmen, of course, do not actually say that unemployment is not serious—on the contrary. "We recognize that unemployment is a serious problem," Council of Economic Advisers Chairman Herbert Stein told the Press Club last month. "At the same time," he continued, "it would be a travesty to call it a disaster or to compare the situation with the Great Depression. This is especially true when it is recognized that in 1971, 48 per cent of all unemployment was accounted for by people aged 16 to 24 and another 23 per cent by females 25 years of age and older." Without saying why, Dr. Stein left the clear implication that unemployment of women and young people is less serious than the unemployment of mature men. He also pointed out that a lot of young people are not in the labor force—as though that eased the plight of those that were—and that some of those counted as looking for work were also in school.

Dr. Stein is right, of course, that a higher proportion of the unemployed are women and young people than, say, a decade or two ago. This is partly because there are proportionately more women and young people in the labor force than there used to be, but it is mostly because unemployment rates for these groups have gone up relative to those of experienced men. Both phenomena—the increase in women and young people in the labor force and the relative rise in their unemployment rates—have been taking place gradually over the years. They are not features of the current recession.

The administration's apparent contention is that unemployment of women and young people does not cause as much pain and suffering as unemployment of mature males because other people do not depend on their incomes. But this is only partly true. Many women, especially black women, head families, and so do many men under 25. The 23-year-old married man with a new baby and no assets to fall back on may feel his unemployment more keenly than his father. There is also psychological damage. The young person who can't find work may end up pretty discouraged with himself and society. Even

loss of a part-time job may be serious, if it means dropping out of school.

Wives tend to earn less than their husbands, but that does not mean that no one depends on their incomes. The black family which is finally making it because both husband and wife work may feel just as desperate about the payments on the house or the car when the wife is out of work as when the husband is.

In any case, the unemployment rate is not so much a measure of economic pain and suffering—the poverty rate is a more sensitive indicator of that—as a measure of the health of the economy. It is also probably a pretty accurate proxy for the way people feel about the economy, which is why it matters in elections. If jobs are hard to get, people know about it. They worry about their own jobs; they postpone the vacation or the addition on the house or the store. It may not matter much to their state of mind whether the particular person they heard was out of work was Sam's father, or Harry's wife or Aunt Sue's oldest boy.

The second argument—that unemployment is attributable to de-escalation of the war—is a recurrent theme in the President's speeches. "We all know why we have an unemployment problem," he told the Nation on August 15. "Two million workers have been released from the armed forces and defense plants because of our success in winding down the war in Vietnam. Putting those people back to work is one of the challenges of peace..." "It is obvious," he repeated in his last economic message, "that the unemployment problem has been intensified by the reduction of over two million defense-related jobs..." And in the State of the Union address, he pointed out again "that if the more than two million men released from the armed forces and defense-related industries were still in their wartime jobs then unemployment would be far lower."

These presidential assertions that peace causes unemployment—vaguely reminiscent of Marxist theories that a capitalist system needs imperialism to maintain prosperity—are not stressed in the Report of the President's Council of Economic Advisers for the simple reason that they are not very accurate economics.

The attribution of the unemployment to military cutbacks implies that defense expenditures create employment and that other government expenditures do not. But there is no basis for this. If the administration had fully offset drops in military spending with increases in civilian programs, the de-escalation need not have created any aggregate unemployment at all, although there would have been local difficulties arising from the fact that the defense and civilian employment might have been concentrated in different places.

In fact, however, prior to August 1971, the administration deliberately pursued a policy of not offsetting the military cutbacks fully with increases in civilian spending. They were consciously holding down total government spending in order to create slack in the economy and reduce the inflation. It was not an implausible policy, although the human costs were bound to be high. Many economists thought at the time that it would be worth creating some unemployment in order to lower the rate at which prices were rising.

However, the policy did not work. Unemployment rose all right, but the inflation stubbornly refused to subside. Finally, in August 1971, the administration abruptly changed its strategy, began fighting inflation directly with wage and price controls, and started to use the budget to stimulate rather than cool off the economy. In view of this history it would be far more accurate to attribute current unemployment to a well-intentioned but unsuccessful attempt to fight

inflation without price controls, than to attribute it to de-escalation of the war.

The third argument—we are doing everything anyone could do about unemployment—was strongly stated by Dr. Stein in his remarkable speech to the Press Club, "This administration has, I believe, the most powerful, comprehensive, coherent program for dealing with unemployment that any administration ever had . . . We are running the biggest budget deficit ever, except for World War II . . . We have the most comprehensive price-wage control system ever except during the Korean War and World War II . . . We have suspended the convertibility of the dollar . . . We are spending this year about \$10 billion for manpower programs and unemployment compensation . . ." The message is: you Democrats have a lot of gall criticizing us; after all, we're playing your song and playing it louder than you ever played it yourselves.

This recital of Republican accomplishments boggles the mind—at least for a moment. If you had offered 100 to 1 odds a year ago that Stein would be standing before the Press Club crowing about deficit spending, devaluation, and comprehensive price controls you would have had no takers. If you had predicted that the Republicans would actually be exaggerating the size of their deficit you would have evoked the sympathetic half-smile that people reserve for harmless nuts.

But look carefully at that whopping \$39 billion deficit now predicted for the fiscal year ending June 30, 1972. In the first place, most of that deficit is a result of the sluggish economy, not a response to it. Tax collections are below what they would have been at full employment and some kinds of expenditures (such as unemployment compensation) are higher. The full employment deficit, a much better measure of the stimulative effect of the federal budget on the economy, is much smaller (\$8 billion, not \$39 billion) and very recent. In the first half of this fiscal year the government actually ran a small full employment surplus.

Moreover, the full employment deficit in the second half of the fiscal year (January-June 1972) is at least partly accomplished by pushing expenditures that would normally have occurred later into the current six month period. For example, the administration has indulged in a bit of calendar reform—the most original budget idea since Julius Caesar?—and has at least temporarily abandoned the twelve month year. Thirteen months worth of public assistance payments will be made to the states in the current fiscal year, leaving only eleven payments for next year. This maneuver has the effect of making this year's deficit look bigger (and next year's look smaller), but it has no real economic effect. States are not going to get their money out to poor people any faster than they would have anyway. Some of the other devices used to enlarge the current deficit seem equally unlikely to have any real economic effect. As George Perry put it in testimony before the Joint Economic Committee recently, the current "deficit looks to be about 10 parts slack-induced . . . 1 part full-employment deficit, representing a noticeable but not excessive fiscal push on the economy; and 1 part hope, representing estimates of expenditures that may never materialize."

That the administration is finally using the budget to stimulate the economy is good news; whether they are pushing hard enough remains to be seen. One could certainly make a case for creating deficits in a more stimulating way—giving consumers a tax break rather than investors and spending more on programs that create jobs directly, such as public service employment.

In the end, of course, it may turn out that the unemployment issue is really very simple

after all. The average voter is probably neither interested in nor influenced by the who-struck-John arguments of the economists. If he has the gut feeling—based on personal observation, unemployment rates, or whatever evidence comes to his notice—that the economy is moving forward he will vote for Mr. Nixon; and if he doesn't, he won't.

EDITORIAL DRIVEL ON CAPITAL PUNISHMENT

HON. LOUIS C. WYMAN

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. WYMAN. Mr. Speaker, today's Washington Post editorializing that somehow capital punishment is outmoded cruelty unbecoming a free state is more editorial drivelt. Justifiable homicide has always included capital punishment, derived in part from the ancient "lex talionis"—an eye for an eye and a tooth for a tooth.

Every person subject to the jurisdiction of American jurisprudence should know that if he or she willfully and deliberately with premeditated design, kills another human being, that they will forfeit their own life.

The sanctity of the lives of law-abiding citizens must be protected by the assurance of capital punishment in those relatively narrow range of situations in which innocent citizens are deliberately slain by willful criminals.

There can be no question but that the prospect of capital punishment is a deterrent to some people. How many murders it actually deters is impossible to determine—just as it is equally impossible to assert that the absence of the penalty of capital punishment results in a higher rate of first degree murder. In this era of rising crime, including such truly horrible, deliberate murder, as the Manson garroting of Sharon Tate, a helpless 8-months pregnant girl, or the methodical slaying of a dozen migrant farmworkers or the hiring of an assassin to slay for financial gain, society deserves and is entitled to the protection of the prospect of capital punishment. It also is entitled to firm, swift justice, not only in trial but in appellate review and in execution of sentence.

As for calling capital punishment cruelty—this is more editorial drivelt. It is no more cruel than imprisonment for life plus 99 years—and a heck of a lot less expensive to boot.

An editorial follows:

KILLING IN MARYLAND

Del. Devin Doolan has introduced in the Maryland House of Representatives a modest, sensible and humane proposal for the substantial limitation of capital punishment as a factor in the state's criminal justice system. His bill would not totally abandon the death penalty as a punishment—a position dictated in our judgment by respect for the sanctity of human life and by a recognition that the state can best foster such respect by its own observance of it. Nevertheless, it would take a significant stride forward. It would do away with execution except for persons found guilty of the kill-

ing of a law-enforcement officer during the commission of another felony, murder committed by someone inside a penal institution or premeditated killing by someone previously twice convicted of that crime.

The adoption of this measure would put Maryland among those states and territories which have recognized that the death penalty is inconsonant with contemporary standards of civilization. Eleven have abolished it outright; five more have narrowly limited its application, as in Mr. Doolan's proposal, to a few extremely serious crimes. The country as a whole has manifested its repugnance for killing its convicts by almost completely avoiding that gruesome punishment in recent years. In 1935, capital punishment was a commonplace in the United States; 199 human beings were put to death officially in that year. In 1967, there were just two executions; and there have been none at all since then. Leadership in the deliberate abandonment of this outmoded cruelty would be becoming to the Free State.

COMPREHENSIVE TAX REFORM

HON. THOMAS L. ASHLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. ASHLEY. Mr. Speaker, today I am joining Senator GAYLORD NELSON in sponsoring a comprehensive tax reform bill designed to make the Federal tax system more equitable and to generate more revenue.

Sometimes is very wrong with a system in which people earning \$50,000 a year pay no more in taxes than persons earning \$5,000. We must restore the integrity of our most progressive tax—the Federal income tax—by closing the loopholes which permit the rich to frequently pay less than the poor and some of the very rich to pay nothing at all.

The measure I am introducing today would not only make our tax system fairer, it would provide some of the revenue necessary to enable the Federal Government to develop a national health care system, reduce the burden on property taxes as a basis of educational funds, rebuild our cities, provide increased employment opportunities, and clean up our environment.

Some of the major provisions of the bill, which would produce \$15 billion or revenue in 1973, are as follows:

First, substitute a \$150 tax credit for the \$750 personal exemption. At present a personal exemption is worth \$525 to the top bracket taxpayer and only \$107 to the taxpayer in the lowest bracket. This change would reduce taxes for approximately 30 million taxpayers with income below \$10,000, while still returning an additional \$1.9 billion a year to the Federal Treasury.

Second, tax capital gains at death. Under our present system, if a taxpayer bought \$3 million worth of stock in 1958 and sold it today for \$10 million, he would have to pay a capital gains tax on the \$7 million increase in value. But if he holds the stock and passes it on to his heirs through his will, neither he nor his heirs will ever have to pay tax on the amount of the increased value of the stock while

he held it. By taxing the \$7 million as a capital gain at death, the bill would eliminate an unjustifiable loophole and raise \$3 billion a year.

Third, place a 15 percent ceiling on all mineral depletion allowances. In 1966, the top 20 American oil companies made \$4¼ billion in profits, yet they paid Federal income taxes at the rate of only 8½ percent. At the same time, the Treasury estimates that the cost of the average well was recovered 19 times. While the oil depletion allowance was reduced from 27½ percent to 22 percent by the Tax Reform Act of 1969, there is still no valid reason for not reducing it further. A reduction to 15 percent would save \$400 million a year.

Fourth, repeal the asset depreciation range (ADR) system of accelerated depreciation for business property. This scheme to allow rapid writeoffs was written into the Revenue Act of 1971 to encourage businesses to invest in new plant and equipment. But with business currently using only 74 percent of the plant and equipment it already has—and the 7 percent investment tax credit of the 1971 act also designed to encourage such investment—the ADR provision is likely to have little impact on investment. On the other hand, its repeal would bring in \$2.4 billion in 1972 and \$3 billion annually thereafter.

Fifth, broaden the application of the minimum tax. The minimum tax provision which was included in the 1969 Tax Reform Act has reduced the number of persons with reported incomes in excess of \$200,000 who pay no Federal income tax from over 300 to 112. By making more items subject to the minimum tax and by increasing the tax rates from a flat 10 percent to 50 percent of the regular income tax rates, we could eliminate the gross inequity of the very rich paying little or no taxes and at the same time raise an additional \$3 billion.

Overall, a comprehensive tax reform bill such as I have proposed would make our tax system far more progressive and equitable and would also yield the revenue necessary to provide the social services we want, without diminishing job creation or exploration for important minerals, the major ostensible justifications for these tax breaks.

LABOR MOVES AGAINST TAX LOOPHOLES

HON. JEROME R. WALDIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. WALDIE. Mr. Speaker, the efforts by the American labor movement to bring about a dramatic closing of present tax loopholes should be commended by every taxpaying American.

Legislation being considered by the Congress to achieve such tax reform should have highest priority during this session.

Clearly, Mr. Speaker, the will of the people is for enactment of these reforms

and I would like to state at this time my unequivocal support for these efforts.

Mr. Speaker, the County Employee, official publication of the Los Angeles County Employees Association, recently published an excellent report on this matter entitled "Labor Moves Against Tax Loopholes."

I would urge all my colleagues to read this informative article.

The article follows:

LABOR MOVES AGAINST TAX LOOPHOLES

Demanding drastic and immediate tax reform, AFL-CIO leaders have blamed the Democratic-controlled Congress, as well as President Nixon, for shifting billions of dollars in taxes from big business to the working man and plunging the U.S. into its worst debt deficit in history.

Wealthy corporations and their stockholders have been relieved of their fair share of the Federal tax burden, according to the AFL-CIO Executive Council, and "the great majority of Americans whose living standards depend on a job and a paycheck will be called upon to make up the balance."

AFL-CIO Chief Economist Nathaniel Goldfinger said the national debt under Mr. Nixon has risen to historic heights, and the AFL-CIO is supporting Chairman Wilbur D. Mills of the House Ways & Means Committee in his efforts to force the Nixon Administration into tax reforms.

Mills, the powerful Democratic Congressman from Arkansas, called on President Nixon to submit proposals by March 15 for closing the glaring loopholes in the Federal income tax structure. However, Budget Director George Shultz said he was not optimistic, when asked to evaluate chances for plugging tax loopholes.

HUMPHREY BLASTS \$18 BILLION TAX GAP

On another front, Sen. Hubert H. Humphrey called for comprehensive changes in the Federal tax structure to close gaping loopholes that result in an annual tax loss of \$18 billion.

Humphrey called the Federal tax structure "rigged in favor of the wealthy few at the expense of the many—rigged in favor of unearned income, rigged against you—the working man." He said America has become "a nation that is privately rich, but publicly poor."

"The top two percent in income earn 22 percent of all income, but pay less than 10 percent of the total tax bill," the 1968 Presidential nominee said, adding that the Treasury Dept. admits more than 100 Americans making over \$200,000 a year paid no income tax at all.

Pointing out that one-fourth of the population earning \$8,000 to \$14,000 must shoulder 36 percent of the total tax bill, Humphrey declared:

"The time has come for tax justice for the American working family. The time has come for a tax system that says to the super rich, to the banker growing wealthy on sky-high interest rates, that you must carry your fair share of the load," Humphrey said, adding:

TAX BREAK OF \$9 BILLION FOR BIG BUSINESS

"Our tax system is full of inequities—breaks for the wealthy and special interests, and loopholes. The reason your tax bill is too high is that the bill for the favored few is too low. One large oil company earns more than \$2.8 billion a year but pays less than 11 percent of its income in taxes, while a worker with a wife and two children earning \$8,000 a year pays about the same rate."

"Is it fair that big business got a \$9 billion tax break in the Revenue Act of 1971? I say no—no more fast write-offs and no more phony loopholes."

"Is it fair that 10 percent of our people can take advantage of all kinds of tax dodges

and tax shelters to avoid paying taxes? I say no. The American public is through subsidizing generations of wealth."

"The Treasury Department has become the blocking back for big business, and the little man has no one running interference for him in Washington."

INSURANCE FIRMS PAY ZERO TAXES

Meanwhile back in Sacramento, spokesmen for "Project Loophole" charged that legislation aimed at reducing insurance company tax breaks has turned into a "quarter-million dollar investment bonanza."

"Voters were hoodwinked" said a spokesman for the group formed by State Sen. Mervyn M. Dymally (D-Los Angeles) to probe State tax inequities.

As a result, according to "Project Loophole," twelve insurance firms based in California paid no State taxes at all in 1970.

The Project Loophole figures have been confirmed by the State Board of Equalization.

In a related development, State Sen. David A. Roberti (D-Los Angeles) reintroduced legislation to eliminate the insurance company tax loophole. But similar efforts have failed—most recently during the 1971 legislative session—due allegedly to the influence of the powerful insurance lobby in Sacramento.

QUIET TRAGEDY OF RURAL AMERICA

HON. JOHN H. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. DENT. Mr. Speaker, in a recent issue of New Priorities, I read an article which underscores the growing concern many of us have about the decline of family farms and resultant migration of rural Americans to our already overcrowded, blighted urban areas. Mr. Samuel Bougher, the author of this compelling study, accurately identifies the culprits of this unfortunate trend. I think my colleagues will find this article not only enlightening, but worthy of a reconsideration of our national priorities. Also, I think it relates directly to a provision in H.R. 7130—the minimum wage bill reported by the Committee on Education and Labor—with respect to the coverage of conglomerate enterprises.

I insert the following article in the RECORD at this point.

THE QUIET TRAGEDY OF RURAL AMERICA

(By Samuel Bougher)

THE PROBLEM

While the nation's attention was focused on the plight of its cities, and metropolitan Americans rested comfortably with their Jeffersonian notions of the family farmer satisfying his physical and spiritual needs from the soil, major forces have been at work transforming rural America into a network of corporate fiefdoms. We are now on the verge of closing American farming—and with it large parts of rural America—to all except the giant conglomerate.

America's number one industry is food—not defense hardware, not transportation, not electronics. In 1970, the American grocery bill came to \$91 billion. Add in the restaurant tab, and the total food bill for that year was \$114 billion. The federal government spends more than \$5 billion a year in direct agricultural outlays and loses millions more because of agricultural tax loopholes.

Yet little public attention has been directed to the drastic change in character of land-holding patterns in America, or to the government policies—a patchwork of contradiction, counterproductivity and confusion—that have encouraged that change.

What has been happening to American agriculture since World War II? The total number of farms has been declining rapidly, while the average size of farms has been increasing. In 1945, there were about six million farms averaging 167 acres each. In 1971, there are less than three million farms, averaging 389 acres. Half as many farms, averaging twice as large in 25 years. In short, farmland has not been retired, it simply has been concentrated in fewer hands. USDA officials estimate that within the next two decades, 500,000 large-scale corporate farms will do the work of today's three million enterprises.

The truest picture of what has been happening in rural America can be seen by examining who is selling how much. In March of 1970, 56.5 percent of America's farmers accounted for less than eight percent of all farm sales, while 13 percent, the largest of all farms, wound up with two-thirds of all U.S. farm sales.

Meanwhile, 70,000 family farmers each year have been forced to give up farming—as a profession and a way of life—and leave rural America, eventually taking with them the non-farming rural service people who have lost their markets. While the American city has become almost unbearably overcrowded, large areas of America have become rural ghost towns, snapshot negatives of the urban ghetto. Eighty percent of the people in the United States now live on ten percent of its land.

Who are the farmers left behind, the operations that buy out their departing brethren and grow larger and larger? What are the names on the mailboxes in rural America today? The American family farmer is being replaced by the vertically integrated "total food system." Today's American family is named H. J. Heinz Company, Coca Cola Corporation, Stokely Van Camp, Campbell Soup, Ocean Spray Cranberries, Prudential Insurance Company, Ralston-Purina, General Foods, Green Giant, Dow Chemical, Penn Central, Union Carbide, Goodyear Tire, Tenneco, etc. Those who originally sold to the farmer, or purchased from the farmer, have become the farmer.

The family farmer has not been the only victim of the new corporate land grab. Agribusiness has consistently exploited farm workers. To the industry, these field laborers are a necessary evil, wanted when it is time to hoe a field or harvest a crop, but definitely not wanted once the task is done. Farm workers are perceived as just another cost of production, not human beings. More attention is devoted to the tomatoes than to the people who pick them.

Farm workers are almost exclusively an agri-business problem. Small farmers—those grossing less than \$5,000—paid only 5.2 percent of the farm wage bill in 1964. Eighty-eight percent of all farm wages were paid by the largest 13 percent of all farms. But the wages they paid are among the lowest in the country. Even farm workers who are able to obtain year-round employment—less than 12 percent of the total—earn less than \$3,500 a year.

The condition of America's farm workers and their families is no secret. Farm worker families today still live in stifling shelters without heat, plumbing, privacy or hope for human happiness.

It is not the inevitable workings of history that made agri-business dominant and farm workers subservient in rural America; rather it has been the carefully managed impact of government policies. Farm workers are not the ones that have shaped these policies, nor have the great mass of small and medium size farmers been the ones to make the

choices; the policies are the product of agribusiness and their powerful spokesmen in Washington. Just as farming has become concentrated in fewer and more powerful hands, so has the rural political power.

THE CONFERENCE

There are a number of important issues that could be discussed at a conference on the plight of rural America, including:

1. The relationship between the urban problem and the rural problem. A million people have been leaving rural America each year. Attempting to solve the urban problem without a recognition that the disease of the city was contracted in rural America is like trying to bail out a boat with a hole in the bottom.

2. Are we in danger of forever losing the rural alternative as a way of life? Are we destined to become a thoroughly urban nation, with rural America simply a factory for our food and fiber? Is the process reversible? How?

3. What has been the role of government in promoting this transformation in rural America? Who runs the Department of Agriculture for whom? How do our tax laws encourage corporate farming to the detriment of the family farmer? Are government farm subsidies responsible for creating the agriculture of bigness?

4. Why have we made no progress in eliminating rural poverty since the President's Commission on Rural Poverty poignantly documented the extent of the problem in 1967? Why aren't farm workers thoroughly covered by social security unemployment insurance, workmen's compensation, minimum wage laws, child labor standards, and legislation permitting collective bargaining?

5. Where do we want to go in rural America? Who decides? Should the powerful control? Are the present directions our manifest destiny?

6. *Solutions.* Should the federal government initiate a policy of *land reform in America*, buying land back from the largest farms and selling it to farm workers and other low income families at liberal credit terms? Should the federal government use its procurement power to help reverse the flow from rural America? Should agricultural subsidies be pegged to income rather than production? Should farm workers come fully within the social legislation of the past three decades?

CLEAN WATER PACKAGE

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. DINGELL. Mr. Speaker, under date of March 17, 1972, a group of 36 Members of the House sent their colleagues a letter urging support of the clean water package of amendments to the pending water pollution control legislation—H.R. 11896. I include the text of the letter and the names of the cosigners at this point in the CONGRESSIONAL RECORD:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 17, 1972.

DEAR COLLEAGUE: In a few days the House will take up the bill (H.R. 11896) called the Federal Water Pollution Control Act Amendments of 1972. The Clean Water Package of Amendments will be offered to strengthen the bill in line with the stronger Senate-passed bill (S. 2770).

The Clean Water Package of Amendments will:

Establish that, by 1981, without further action by Congress, polluters must use the best available technology, taking into account the costs, to clean up the wastes they pour into our waterways;

Provide more national control over State programs of discharge permits, in order to prevent economic hardship and interstate competition for industries, communities, and workers and to insure that the water quality objectives of the bill are achieved;

Strike from the bill provisions that give polluters who violate this bill or the Refuse Act a total immunity until 1976 from enforcement actions, merely because they file an application for a permit;

Provide that the rights of citizens to sue polluters and the Environmental Protection Agency, which this bill would gravely restrict, should be no less than the rights which Congress established in the Clean Air Act and which the House adopted on February 29, 1972, in the Noise Control bill (H.R. 11021);

Prevent the weakening of the National Environmental Policy Act of 1969 and the Fish and Wildlife Coordination Act;

Provide criminal sanctions against polluters who willfully violate an EPA order to abate their pollution; and

Provide adequate worker job protection.

The Clean Water Package is supported by a broad-base group of environmental, civic, labor, farmer and other groups, such as: Amalgamated Clothing Workers of America; Bass Anglers Sportsman Society; Clean Air, Clean Water, Unlimited; Common Cause; Environmental Action; Environmental Policy Center; Friends of the Earth; Izaak Walton League of America; League of Women Voters of the U.S.; Minnesota Conservation Foundation; Minn. Environ. Control Citizens Assoc.; Minn. Public Interest Research Group; National Consumers League; National Farmers Union; National Wildlife Federation; Northern Environmental Council; Oil, Chem., and Atomic Workers Intern. Union; Save Lake Superior Association; Sierra Club; Sport Fishing Institute; Trout Unlimited; United Automobile Workers; United Steelworkers of America; The Wilderness Society.

We urge that you support adoption of the Clean Water Package which will be printed in the Congressional Record of March 20, 1972.

Sincerely,

Henry S. Reuss, Thomas M. Pelly, John E. Moss, Lucien N. Nedzi, Dante B. Fascell, Floyd V. Hicks, David R. Obey, William D. Ford, Bella S. Abzug, Paul N. McCloskey, Jr., Martha W. Griffiths.

Philip E. Ruppe, James G. O'Hara, Ken Hechler, H. John Heinz, III, Benjamin S. Rosenthal, Robert O. Tiernan, Robert W. Kastenmeier, John D. Dingell, John P. Saylor, Thaddeus J. Dulski.

Gilbert Gude, John H. Dent, Silvio O. Conte, Donald M. Fraser, Jack F. Kemp, Charles C. Diggs, Jr., John Conyers, Jr., Michael Harrington, Thomas M. Rees, F. Bradford Morse, Charles B. Rangel, Charles A. Vanik, Abner J. Mikva, Donald W. Riegle, Jr., John G. Dow.

PRICE OF MEAT

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRASSO. Mr. Speaker, it is my strong conviction that the Secretary of Agriculture, Earl L. Butz, should im-

mediately resign from his post in the Cabinet.

Secretary Butz talks as if he is a friend of the American farmer; but in reality, he is less a friend of the farmer than he is a monumental insult to the American public. Since he became Agriculture Secretary last December, Mr. Butz has consistently demonstrated a callous indifference to the needs and the pleas of the American people. He has tried to force them to their knees by not only praising rising meat prices, but also blaming consumers and their spending habits for meat price hikes. And what is their crime? Consumers merely want to include meat in their family diet.

Last week, my colleague STEWART McKINNEY, of Fairfield, and I wrote to President Nixon urging him to impose an executive freeze on meat prices until such time as the Price Commission revises the guidelines applicable to food prices. In our letter, we stated that meat prices in the Northeast have risen by 8 percent, sometimes even as much as 11 percent, in the last 2 months. It is anticipated that consumers will spend a record \$125 billion for food in 1972—that is \$6.6 billion more than in 1971; and to a great extent that 4.5-percent increase will be taken up by meat price increases.

The wholesale price index for foods rose 1.8 percent in February—including raw agricultural products which are totally uncontrolled, and processed foods, which are controlled. At that rate, meat prices this year will rise a horrendous 21.6 percent.

Secretary Butz' reaction to uncontrolled food prices is unsuppressed glee. The present prices for beef—the highest since the Korean war—provide "the best way to insure a good supply of better cuts of beef that I prefer," he recently said in a speech in Houston, Tex. Clearly the Secretary is unconcerned that millions of Americans are troubled by exorbitant increases in prices for hamburger, frankfurters, and other so-called cheaper cuts of meat. He says salaries are increasing—it seems his philosophy is that people should get ahead in order to stand still.

And if any attempt is made to give the consumer a chance to catch his breath—by instituting a freeze on meat prices or food price controls, for example—this presumably intelligent, rational high Government official cries that he will "fight like a wounded steer" to prevent any slowing of meat price increases. In addition, he threatens the public with empty meat counters and meat rationing. Secretary Butz recognizes the rising tide of pressure from increasingly angry and dismayed consumers to halt further erosion of the shrinking family food dollar. That is the "attack" he resents and against which he invokes his "wounded steer" posture.

It is understandable that an Agriculture Secretary would defend the interests of farmers. After all, the American farmer is the most efficient food producer in the world, and yet he receives a smaller reward for his investment than other industries, has little control over what he gets for what he produces, and in gen-

eral is in economic trouble despite Government subsidies.

However, it is also true that rising food prices do not translate into a corresponding increase in income for the farmer. His share in the percentage of retail food price increases has grown steadily smaller over the years. What happens to food prices happens to them between the farm and the grocery store. The average annual food bill for consumers rose from \$2,223 to \$2,244 between 1970 and 1971, with all but \$1 of the \$21 increase going to processors and retailers. The point is that farmers are not to blame for climbing food costs.

It is also understandable that the administration would like to curry favor with farmers during this election year by keeping food prices high and boosting farm subsidies by nearly \$1 billion to a record high of more than \$4 billion. However, this plan does not require as its goal the breaking of the consumer's back. The administration seems to be concerned about rising meat prices—meat imports—mostly cheaper grades—have been allowed to increase by 7 percent, though this will have an admittedly negligible impact on prices; Cost of Living Council Director Donald Rumsfeld says he is concerned; and Price Commission Chairman C. Jackson Grayson suggests that if consumers ate less meat, or sought cheaper cuts of meat; the upward pressure on prices might be eased. More important was President Nixon's recent comment to his newly-sworn economic advisor, Marina von Neumann Whitman:

Now get those food prices down!

I look forward with interest to the President's response to Congressman McKINNEY's and my letter urging an immediate freeze on meat prices.

What is hard for me to understand is Secretary Butz' flippant and condescending attitude toward the American people during this period when all of us are trying in a rational manner to bring about economic recovery and provide a better life for all Americans. Mr. Butz' reaction to the 7-percent ceiling increase in meat imports for cheaper cuts is that, to his pleasure, housewives will not be helped much.

I guess she wants a nice choice roast or a good sirloin steak. She doesn't like hamburger too much.

The housewife may not prefer hamburger; but if Secretary Butz has his way, she will be lucky to be able to afford enough for her family on special occasions.

Such a shocking performance ill becomes a Cabinet officer whose job is to serve the public interest. To be sure, we will not be intimidated by him in our efforts to ease the burden of the family food shopper. To the man who cheers soaring meat prices while consumers struggle to put meat on the family table, my suggestion is that he would best serve the public interest by resigning immediately from a post which requires far more sensitivity, reason and tact than are reflected in his statements to the American public.

THE POLICY OF "ASSURED DESTRUCTION"

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. BOB WILSON. Mr. Speaker, free-swinging freshman Congressman FLOYD SPENCE is the product of a football scholarship at the University of South Carolina. Captain of the track team and basketball player, Spence also collected highest scholastic and student government honors. He brought this same fire and leadership to law school and to civic, military and political life. At 43, SPENCE is a veteran South Carolina lawmaker and now, on the Washington scene, an outspoken proponent of a national defense posture that will serve to keep America viable and a cornerstone of world peace.

It is a pleasure to include as a portion of my remarks the following article from *Survive* magazine:

SOVIET ARMS BUILD-UP AND THE POLICY OF "ASSURED DESTRUCTION"

(By Congressman FLOYD SPENCE)

The annual Soviet Armed Forces display on November 7, honoring the revolution of 1917, did not show any new missiles or strikingly new weapon systems. But that is certainly no cause for complacency or rejoicing. The build-up of the Soviet arms arsenal and their expansion of defense research and development in search of new and better weapon systems continues at a steady pace.

In his speech at the Moscow ceremony, Soviet Defense Minister Marshal A. A. Grechko stressed again that "the most important task is to raise the defense capacity of the USSR, the combat power of the Soviet armed forces and their constant preparedness..."

In line with this statement, it is significant that this year's military parade in Moscow was seconded by a display of Soviet naval strength in the port of Havana, Cuba. A naval detachment consisting of two submarines and two submarine chasers, under the command of Rear Admiral N. V. Soloviev, arrived in Havana several days before the November 7 commemoration to participate in the Cuban celebrations. The Soviet vessels displayed anti-aircraft rockets, and atomic missiles were clearly visible on the decks of the larger submarine chaser. Friendly Cuban visitors queued up on the piers in long, curious lines and were invited aboard for a close-up look.

The menacing language of this show of strength in American waters should not be overlooked or misunderstood. This is the first time the Soviet armed forces have ever celebrated their revolutionary holiday in any official way in the waters of the North American continent.

Ever since the time of Lenin, the Communists have said continually that they must gain not only a strategic superiority but a complete and effective supremacy over the capitalist world—in weapons technology, armed forces strength, economic capacity to produce decisive weapon systems, and psychological and moral readiness to use these weapons. That was what Khrushchev meant when he used his famous phrase "we will bury you." The Soviets have behaved according to their statements, but for some strange reason, which I confess has always baffled me, their pronouncements are considered by too many Americans to be only so much meaningless propaganda.

Many people, including leading govern-

ment officials, expected and hoped that after gaining parity, both the United States and the Soviets would level off and stop further expansion of their weapon systems.

In 1968 we agreed to join with the USSR in negotiations on strategic arms limitations, the so-called SALT talks. The United States at this time had 1,054 ICBM's, 656 SLM's and over 600 long-range bombers; the Soviet Union had a total of 600 ICBM's, including 100 heavy SS-9's. Since 1968 there have been five rounds of SALT, alternating between Helsinki and Vienna. During the three years of negotiation, the Soviet Union has increased its ICBM arsenal by about 900, to the present figure of about 1,500 or 1,550 units, including approximately 300 SS-9's.

The United States was serious about arms limitations and did not increase the actual number of its ICBM's. We began only a replacement program wherein the improved Minuteman III was substituted for out-dated Minuteman I and II missiles and some MIRV-ing of individuals warheads was undertaken.

Contrast this with the Soviet Union, which has maintained the ICBM construction rate of about 300 new missile systems annually, or about 150 to 180 new missiles from one SALT negotiation round to the other. In 1971, space reconnaissance revealed that the Soviets were preparing new and bigger silos for ICBM's, the number of which by October, 1971, was estimated at 100. These new underground silos are capable of accommodating missiles even larger than the formidable SS-9. As Hugh Sidey noted in the October 15th issue of Life magazine, our best experts are still uncertain as to precisely what this new construction means, weaponwise.

In the area of missile defense, the Soviet Union has about 67 ABM sites, with SA-7 missiles capable of missile intercept at high altitudes. According to more recent reports, a group of about 50 new launchers is being deployed for ABM interceptors with much higher velocity. Our modest Safeguard ABM program is dwarfed by comparison.

During October, Soviet technology succeeded in actually intercepting a satellite in flight, linking the interceptor with it and blowing up both. This is a feat we have yet to perform. If the Soviets can intercept and destroy their satellites in flight, they may soon be able, if they are not already, to intercept and destroy our surveillance satellites. This is the only practical means we have of keeping abreast of arms developments taking place within their closed society. Their ability to destroy these reconnaissance satellites means they would control the timing of any possible future direct confrontation. In the critical days or weeks preceding such possible strike they could eliminate our ability to anticipate or observe the preparations for the strike.

Further, the Soviet strategic missile force now has 750 medium-range units capable of reaching U.S. installations in Western Europe and the Far East for which the United States has no comparable equivalent, either through NATO or otherwise.

Then there is the Soviet Navy. It has grown much faster than anybody could anticipate or predict. In the short period of 14 years, under the command of Admiral S. Gorshkov, the Soviet submarine and surface fleet grew to a strong force capable of staging in the waters of the world a naval exercise, code named "Ocean," which surpassed any similar maneuver by any country or group of countries in the entire naval history of the world. In 1968 the USSR started its X-class submarine program. This is its principal submarine-launched missile carrier. It is estimated that about 17 such submarines were operational by the end of 1970, and at the rate of about one sub per month, they have close to 27 at the present time. The Soviet

surface fleet concentrated on adding new missile cruisers ("Kresta" class), destroyers ("Kynda" class), and the small speedy "Korvet" and "Osa" boats in numbers surpassing any estimates and predictions. As a result, the Soviets can now maintain a permanent fleet of about 40 to 60 ships in the Mediterranean Sea alone, putting an end to the U.S. Sixth Fleet's complete control of the area and exerting strong political impact in the Middle East, North Africa, and Southern Europe.

The Soviet Union is evidently dedicated to supporting its recent political initiatives with a strong, balanced armed force which will be superior to the United States in the areas of strategic missiles, air force, naval power, and conventional on-the-ground weaponry. They engage in negotiations designed to limit or reduce armaments only for the purpose of speeding up and implementing this final Soviet superiority. The theoretical reasoning of mutual advantage, implicit in "parity," "sufficiency," or "flexible deterrence," has not affected to any appreciable degree the basic Soviet thrust toward a stronger, superior military force and a position of real prevailing strength, both militarily and politically. In pursuit of this goal, the Soviets channel a considerable portion of their resources to expand their armaments research and production. As Mr. Sidey accurately noted in his article, their research and development budget has, for years, exceeded "anything necessary for mere parity with us."

The great weakness of our so-called "assured destruction" posture has been its underlying assumption that the leaders of the USSR respond, as our people do, to the threat of massive retaliation with its toll in death and destruction.* Nothing in the moral or political system they espouse warrants such an assumption, and nothing in the record of their recent arms development indicates concern in that regard.

What is far more likely is that we will, indeed, awake one day soon to find the Soviets have achieved some massive new breakthrough in weapons technology which will render our defensive system obsolete.** It is not in terms of striking particulars but in terms of overall growth and input into research and development and the number and complexity of new Soviet weaponry developments, that this prediction is justified. It simply stands to reason that a nation engaged in extensive weapons research and development will, sooner or later, come up with a breakthrough. Certainly one engaged in only minimal research and development, as we have been, is not likely to be able even to cope with such a breakthrough by others, let alone achieve one itself.

In short, "assured destruction" is not defense—it is merely psychological warfare. And I am convinced it was propounded by people who had a rather poor grasp of both defense and psychology.

The policy of "assured destruction," which is meaningless to the Soviets but grates on the moral principles of Americans, should be scuttled in favor of a forthright policy of dynamic research and development, an unmistakable posture of military strength with a balance between defensive and offensive systems, and a resolute civilian population bolstered by an adequate and visible civil defense. It is to the support of programs and funding essential to such a policy that I have pledged myself as a member of the House Armed Services Committee.

* See English translation of Soviet book Civil Defense (1971) analyzed by Joanne Gailar in May-June 1971 issue of Survive.

** See "The Myth of 'Assured Destruction'" by Eugene P. Wigner, Survive, July-August 1970.

DEVELOPMENT OF A NATIONAL MANPOWER POLICY

HON. WILLIAM A. STEIGER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. STEIGER of Wisconsin. Mr. Speaker, the National Manpower Advisory Committee of the Department of Labor recently convened a conference commemorating the 10th anniversary of the enactment of the Manpower Development and Training Act of 1962 here in Washington, D.C. on March 16-17, 1972. One of the principal speakers to the conference, which was addressed by the Secretary of Labor, James D. Hodgson and others, was Dr. Sar A. Levitan, distinguished labor economist and director of the Center of Manpower Policy Studies at the George Washington University.

Dr. Levitan, who is also vice chairman of the National Manpower Policy Task Force, delivered a speech on the need for the development of a comprehensive national manpower policy as we move into the second decade of major Federal initiative in this vital area. His remarks were indeed penetrating and I would like to share with my fellow Members of Congress the remarks of an esteemed friend.

DEVELOPMENT OF A NATIONAL MANPOWER POLICY

(By Sar A. Levitan)

Each of us has a favorite tale of what changes MDTA has wrought. These stories deal with the millions who turned to the programs for help, the hundreds of thousands who have learned saleable skills and the dollars and cents that they are now earning instead of collecting unemployment insurance or welfare checks. The more sophisticated among us, who talk to computers, come up with impressive benefit-cost ratios that offer proof positive that MDTA has been worthwhile. In brief, we are better off today because we have had the MDTA for 10 years.

But I am running ahead of my story. The script for these festivities calls at this stage for a review of how it all came about.

So let us reminisce. My major qualification for the honor bestowed today apparently is longevity: I'm supposed to tell it as it really was, based upon personal recollection. Regrettably, I was out of the country when the Smith-Hughes Act was debated and passed. So I'll have to telescope my observations on more recent history.

THE SAME PROBLEMS PERSIST

It was only 11 years ago that Congress embarked upon the first of a long and growing series of programs to aid the structurally unemployed. The legislation dealt with federal aid to depressed areas and was proposed for workers stranded in areas of high chronic unemployment. The proposal called for annual federal expenditures of \$10 million to retrain workers whose skills have become obsolete. This was too much for some members in Congress; they thought that the federal government has no business spending good taxpayers' money to train unemployed workers. They loudly expressed the fear that from little acorns big trees would grow and that this little program would lead to vast new federal expenditures. And, thank heaven, they were right. Top manpower policy shap-

ers no longer talk in millions but in billions. As the acknowledged wit of MDTA once remarked, little did he know when he learned fractions in school that in planning manpower programs point one would mean not a dime but a hundred million dollars.

But the quantum jump from millions to billions may be misleading. The scene has not changed as radically as these numbers might suggest. A student of manpower problems today might be forgiven if he has the feeling that the current arguments about manpower policy sound familiar and are reminiscent of the debate that led to the passage of MDTA. It seems that the arguments are just as pertinent today as they were in 1962. A common denominator is still reported by the Bureau of Labor Statistics with annoying repetition as it was 10 years ago: that the rate of unemployment is hovering around 6 percent and a drop to 5.7 percent is no cause for rejoicing and hardly a harbinger of full employment. Critics complain today as they did a decade ago that we should focus more on the 94 percent who are working than on the 6 percent who are unemployed. To clinch the argument they point out that more people are working today than ever before. And in each case, both today and a decade ago, they are correct for the population and economy have grown and the number of employed has continued to rise. But that does not fill the stomachs or satisfy the aspirations of those who are on the outside looking in, searching for useful work but not finding it.

Ten years ago we came up with a good and satisfactory reason—to some—explaining these 6 percent who are left out. We were told that there was really nothing wrong with the economy except that these unfortunate are "structurally" unemployed. And that was that. This explanation was supposed to lead to solutions. The answer we came up with is that if we train the unemployed they will find jobs and we'll all live happily ever after.

It takes more than just a token commitment to establish a society in which every person seeking work can find useful employment. So today again there are those among us who argue that we should settle for less than full employment. I don't believe it. And we have clearly seen that we can reduce forced idleness well below 4 percent, though we should achieve this goal with different methods than we used in the mid 1960s.

Ten years ago when we argued the same issues, the debate was couched more in visceral reactions than in good solid numbers. We have made a great deal of progress in the past decade. We have learned—at least some of us—that the overall average unemployment ratio is a very useful social barometer. But averages by themselves obviously do not tell the full story—a man and a horse have on the average three legs. When national unemployment hovers around 6 percent, unemployment in urban poverty areas is nearly twice as high and among minority youth it is 5 times as high. Disturbing as these statistics are, the recommendation of the technicians to discontinue these series because of alleged flaws in the data, and the eagerness with which policymakers acted on these recommendations, casts doubts on the sagacity of their judgments, leaving a gnawing feeling about their motivation.

Nonetheless, the old "solution" of blaming the messenger for the message persists. Ten years ago we were also dissatisfied with the monthly BLS reports about unemployment, and one national publication came out with an ingenious explanation: It's all the fault of bureaucrats who exaggerate unemployment problems because they have a vested interest in high levels of unemployment. You will have to judge for yourself the amount of progress we made in this area.

The MDTA and other manpower programs are hardly to be blamed for high unemployment. Instead, it would be more appropriate to credit these efforts for the hundreds of thousands who have been helped. Only the most enthusiastic backers and those who opposed stronger medicines to reduce unemployment have viewed manpower programs as a nostrum for our unemployment ills.

THE PROPER ROLE OF MANPOWER PROGRAMS

Unfortunately, it has become commonplace to expect too much from manpower programs. Manpower programs do not create jobs nor should they be expected to eliminate poverty or discrimination. Manpower policies are likely to affect only marginally inflationary pressures or the ills of a complex urban society such as family breakup, pollution, and congestion. Nonetheless, social scientists, politicians, and statesmen have placed unrealistic, possibly naive, trust in manpower programs that encourages rhetoric in place of hardnosed analysis. Economists have claimed that an expansion of manpower programs would reduce unemployment by 2 percent and responsible statesmen have been no less sanguine about the presumed promises of manpower measures.

Newly emerging welfare policies perhaps best illustrate this faith in manpower programs. Conservative legislators who are normally most careful with the taxpayers' dollar and (when they do loosen the purse strings, it is not to help the poor), have shown a remarkable eagerness to spend vast sums of money on manpower programs in the hope of reducing welfare outlays. Both Democratic and Republican administrations have clung to this faith. President Kennedy urged training programs for welfare recipients to motivate them to seek economic independence. His slogan was "rehabilitation instead of relief." President Nixon recommended vast outlays for "workfare instead of welfare."

A decade of experimentation with manpower programs for welfare recipients does not justify optimism about using training programs as a means to reduce relief rolls. Welfare reflects both the multiple handicaps of recipients and the generosity of taxpayers who bear the costs. There are good reasons for expanding manpower programs to aid those who depend on meager relief, but saving public expenditures is not one of these.

Relief is given to the destitute not because it necessarily improves the efficiency of the economy, but out of compassion for those in need. So, too, training programs should be offered to those who have difficulty competing in the free labor market because they need help and not because of the impact of these expenditures upon the national economy. It's not at all improbable that the development of training programs for the poor will reduce their long run dependence upon welfare. If this happens, so much the better. Appropriate training may help some poor people to escape dependency but we should not expect training to cure poverty. More than a quarter of the poor are 55 or older and thus not likely to profit from training. Even more of the poor are in female-headed families. A sizeable group of these women have health problems, more have inadequate education, and even more have skills which command little remuneration even when they can find work. Most have young children in need of day care, which is in short supply nationwide and is more likely to be expensive than dependable. Transportation and health difficulties, the children's needs, and pregnancy often interrupt training or employment. And most crucial is the fact that jobs are not available to all who overcome these obstacles.

Other examples could be cited of the exaggerated faith that has been placed in train-

ing. Members of my own trade have tried to sell training as a new snakeoil, good for all ailments. Expansion of manpower programs, according to these enthusiastic proponents, will cure the economy from inflation, unemployment, ease the trade-off between the two, and improve the environment, to boot. Training increases some individuals' chances of being hired but does not expand the economy's complement of job slots. Thus, it affects the distribution rather than the degree of unemployment. Even if all those seeking work received training, the level of unemployment—forced idleness—might be reduced only marginally.

Even though there is usually slack in the training system and facilities do not operate at full capacity, training programs leave much to be desired as countercyclical tools because they cannot be expanded or contracted at will. It takes considerable time to develop facilities, gather instructional staff, select applicants, and enroll students. By the time the unemployed complete their course of training, the economic conditions that called for the expansion may have changed. Because human lives are involved, training programs cannot be expanded or contracted like an accordion and cannot be easily adjusted to changes in business conditions. We do not base enrollment in Harvard or Stanford or Duke on the level of unemployment. Enrollment in skill centers or the Job Corps should also be based on individual needs.

Manpower programs were initially designed to aid workers whose skills are obsolete. By expanding beyond remediation into prevention, these emerging institutions manifested the evolving democratic tenet that society should not segregate sections of the population to remain—without hope for improvement—the hewers of wood and drawers of water. Training can provide paths for upward mobility, not only for those who have difficulty competing for even entry jobs, but also to those who aspire to more skilled and challenging jobs. But the resources available for manpower programs are quite limited in comparison to the vast universe of need. Therefore, successive administrations and Congresses have placed increasing emphasis upon serving those in greatest need. Until the outbreak of the recession, from which we are hopefully recovering, manpower programs attempted increasingly to serve those who are discriminated against in the labor market and those who have difficulty in competing for sustained gainful employment. But the cost of this choice was to play down the upgrading function of MDTA.

The last decade was a period of experimentation and development of infrastructure for manpower programs. It was also a period of introspection. Possibly no other social program has undergone as close scrutiny by the Congress, the academic community, and the administrators of the program. We know everything that is wrong with these programs and also quite a lot that is right with them. The latest happening in manpower—the Emergency Employment Act—also indicates that we have already developed an efficient structure capable of acting when an emergency arises. It is not easy to give away a billion dollars and to hire 130,000 people within 6 months. But this is exactly what the Manpower Administration has done—most efficiently.

Conventional wisdom about the snail's pace of government action notwithstanding, the manpower administrators have demonstrated the capability to act massively and speedily.

LESSONS OF THE DECADE

From experimentation and introspection, manpower administrators have learned important lessons. Time will permit here to

single out seven conclusions on which most observers would agree.

1. First and foremost, investing in human resources makes sense. Cost-benefit ratios are always open to question, and vary markedly from program to program, but those who vote funds for manpower programs can find comfort in the finding that society gets back more in terms of productive work and reduced support than it expends to provide manpower services. The investment, so say the numerologists, is justified in dollar and cents without even considering the less tangible benefits.

2. There is no single clientele for manpower service, but rather a whole range of groups in the labor force which can benefit. MDTA was designed to assist the technologically displaced. The poor, regardless of cause, were included under the Economic Opportunity Act in 1964, and services were extended on a large scale to welfare recipients after 1967. Recently, there has been an increase in services for veterans and for unemployed engineers and scientists. Gradually, what is emerging is a comprehensive human resources approach and, hopefully, a comprehensive human resources policy, which seeks to develop and utilize fully the abilities of all citizens.

3. Just as many types of persons may benefit, there are no simple solutions for varying problems. It is now recognized that basic education, counseling, medical care, and other services may be required along with training, and these multiple services are now offered by manpower programs or by related governmental efforts. Each target group may need a variety of services. The ideal of one-stop comprehensive delivery to the needs of each individual and each area remains elusive and may actually be impractical in many cases.

4. To provide various services for many groups requires careful coordination. The establishment of numerous separate institutions is not efficient. As manpower efforts have expanded, the federal government has funded programs for all sorts of occasions and for all types of people. This proliferation of manpower efforts has led to a great deal of waste. The Manpower Development and Training Act has continued, to borrow Garth Mangum's phrase, to be the "foundation of manpower programs." But the superstructure frequently extended beyond its foundations and has therefore become wobbly. Ten years of experience has demonstrated the need to develop a more consolidated and comprehensive program.

5. A promising development has been the establishment of institutional training facilities. A decade ago such facilities were not available for adult men and women. It is a mistake, however, to separate those seeking remedial education from persons who seek other educational pursuits. As more and more adults return to school to recharge their intellectual batteries and to renew their skills, remedial education and training can become an integral part of a general adult education program. A comprehensive manpower program would coordinate the learning of adults needing training and those pursuing avocational interests.

6. On a broader scale, it has been learned that even with a complete range of manpower services, clients may still have employment problems because of their location, racial or other discrimination, or other flaws in the labor market rather than in the individual. Manpower programs have helped to spotlight these barriers to full participation in the labor market and have contributed to their decline, though, alas, not yet to their breakdown. Indeed, one of the most important contributions of the man-

power programs is their dissemination of information. The employment problems of various labor market groups are more widely understood than ever before. There is much broader insight into the causes of these problems and the ingredients to their solution. The gradually emerging discipline of manpower is also a vested interest group to work for increased human development efforts.

7. A final contribution of the last ten years has been to provide a more rigorous foundation for public policymaking. In the manpower field, more than ever before, an attempt has been made to measure and evaluate the impact of the programs, to improve their design on the basis of these measurements and evaluations, and to experiment with new approaches. Though in many cases, these results fell far short of what have been accomplished, manpower policymaking was far ahead of other areas. Its methods are now being applied elsewhere, and hopefully, research, evaluation, and experimentation will be an integral part of all efforts in the future.

A FAVORABLE BALANCE

Federal manpower programs are rapidly reaching maturity. The Office of Management and Budget has estimated that the federal outlays alone for manpower programs during the current year will carry a price tag of \$4.3 billion and the cost will rise above the \$5 billion mark by next year. Even with the dwindling value of the dollar, the manpower programs are now an important industry supporting an army of newly certified and aspiring manpower experts.

It may come as news to the newly emerging academic manpower complex that training programs have also benefited hundreds of thousands of clients, though by no means all the 7 million who have gone through the Labor Department's work and training programs. Many enrollees have learned new skills and the families of many more have been fed—after a fashion—while the enrollees have undergone training.

A realistic appraisal of the developing federal manpower policy must acknowledge the limitations of manpower efforts and recognize that training in itself does not produce jobs even for those who have mastered their lessons. The argument that manpower programs are no substitute for fiscal and monetary policies by no means denigrates the proper role of these measures. We must continue to rely upon fiscal and monetary policies to achieve high employment while manpower programs focus on helping individuals develop their potentials to earn a living and to function with dignity.

AN EPITAPH BY THE HONORABLE LESTER G. MADDOX

HON. FLETCHER THOMPSON

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. THOMPSON of Georgia. Mr. Speaker, the Lieutenant Governor of Georgia, the Honorable Lester G. Maddox, recently wrote an epitaph, which he says he hopes will be used as a memorial should America ever fall to her enemies.

I believe that the thoughts expressed in this epitaph are worthy of consideration by the Members of Congress and by all Americans. For that reason, I include it in the Record.

Here lies the remains of the United States of America, born a free republic on July 4, 1776, in Philadelphia, Pennsylvania; delivered by the hands of patriots who so loved freedom that they dared to demand it, standing ready to sacrifice their fortunes, even their very lives, to insure that freedom was established and preserved.

The infant republic was threatened from every quarter. Its own mother country sought to end its life with the sword. Hostile forces, coming by ship and by horseback, tortured the infant with cannon, arrow, and pen. But the infant continued to survive and grow and prosper, nurtured by the love of men and women, now long forgotten, who would not accept tyranny at any price.

And the young nation grew to adolescence. In this period of its growth, it was torn in half by the divergent philosophies, and weak from loss of blood, its wounds healed slowly. But nourished by a strong faith in God and its principles of private enterprise, private property rights, states' rights, and respect for human dignity, the scars of civil war all but completely faded, and the century-old nation matured to become a giant among nations.

Many were envious of the wealth and prosperity of the vibrant, burgeoning republic. While Americans sang of "spacious skies," "amber waves of grain," and "fruited plains," nations without America's abundance of freedom and plenty cried out for food to feed their starving masses, and multitudes flocked to the shores of the one nation which promised every individual an opportunity to reach his full potential.

The greedy came not with outstretched hands, but with clenched fists. But America, with unprecedented industrial muscles developed through the system of private enterprise, and with an unyielding spirit born of a long life of freedom, turned back every aggressor and remained the greatest nation of all time.

But then, with a full belly, weary of war and confident that the land and the hard-won freedom were secure, the giant slept. The American people grew apathetic. They stored away their feelings of patriotism along with the flags they once waved proudly. Politicians became followers rather than leaders, and as crime swept the nation, government failed in its first responsibility, that of protecting the lives and property of its citizens. The people ceased to be secure in their homes and safe on the streets.

The people surrendered public education, and a million times more important, they surrendered their children, the nation's most precious resource, to a federal "police state," which acted without constitutional authority in stealing away the rights and freedoms of America's children and their parents.

America turned from God, grew self-righteous, and began playing God rather than praying to Him, and communism, drug addiction, pornography and immorality ate steadily away at the moral and spiritual strength of the nation.

When tyrants came and nudged him with riots, anarchy, crime, war, and threat of war, the giant only mumbled, "okay," rather than rising to fight.

And so, gradually, communism and socialism replaced capitalism and freedom. Private property rights were abolished a little at a time, and the Constitution of the United States was re-written by judicial tyrants and bureaucratic dictators until ultimately, it became totally meaningless and was discarded.

Human dignity and personal initiative were gradually eroded and replaced with government handout programs until, finally, every citizen received a government paycheck, and none remained to produce the needed wealth.

Faith in God was replaced by faith in man, faith in government, faith in political parties, and faith in immortality of the United States of America.

In his last moments, the giant opened his eyes. In one final, valiant effort, he tried to get back to his feet, but he was kicked back down by the iron boot of tyranny.

His last words were, "Don't give up hope. All we need is more dollars . . . just a few more dollars, . . . just a few more dollars . . ."

May the greatest nation the world has ever known rest in peace.

UNEMPLOYMENT PROBLEMS

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRASSO. Mr. Speaker, the city of New Britain, Conn., in my Sixth District, is experiencing a critical unemployment problem with over 6,200 unemployed persons representing 12 percent of the labor market. Seventy percent of the unemployed are heads of households. The statistics are truly startling.

In an attempt to alleviate the problem, Mayor Stanley J. Pac has conducted

under the Emergency Employment Act an in-depth analysis of the unemployment situation in New Britain. The mayor is to be commended for his imaginative and worthwhile use of EEA funds. For the analysis of the problem has provided the background material necessary to develop projects and programs that will be of benefit in reducing unemployment in New Britain.

On February 25, it was my pleasure to cosponsor with Mayor Pac a conference in New Britain at which Federal, State, and local government agency representatives, business and labor leaders came together to discuss the report and make appropriate recommendations. It is our strong conviction that stepped-up intergovernmental cooperation is the most effective way to translate Mayor Pac's detailed unemployment report finding into constructive programs. Indeed, all of us are working for the objective of creating more jobs and improving the quality of life in New Britain.

For the benefit of my colleagues, I am inserting in the Record a statistical profile of unemployment in New Britain, along with Mayor Pac's preface to the study. The analysis includes the identification of those unemployed, the number of heads of household, number of

veterans, occupational skills, and other pertinent information.

The analysis follows:

STATISTICAL PROFILE OF UNEMPLOYMENT IN NEW BRITAIN, CONN., FEBRUARY 25, 1972

Today's conference has been called to discuss the almost unprecedented economic and unemployment crisis to face the city of New Britain in over twenty years. Historically, it must be said that this city has, for too long a time, been overly dependent upon the defense and aerospace industries for its survival. As a consequence, far ranging national cutbacks have all but crippled our local economy and involuntarily "benched" a staggering segment of the professional, technical, structural and machine trade groups which constitute our city's greatest asset . . . its highest skilled labor force.

The enclosed material well illustrates this staggering joblessness which pervades our labor ranks. They are a result of an in-depth study of unemployment in our city by the staff of the public employment program.

The purpose of this research effort was to accurately number and define unemployment in New Britain, and to analyze the resulting data in order to develop sound action proposals aimed at combating the unemployment problem.

Raw data for this study was gathered from employment application card files at the Connecticut State Employment Office in New Britain.

As evidenced by the results, this city is faced with a problem that is just too big for us to cope with at the local level.

	Percent of category	Percent of total New Britain unemployed	Percent of labor market unemployed		Percent of category	Percent of total New Britain unemployed	Percent of labor market unemployed
I. Unemployed (Jan. 21, 1972):				V. Unemployed in excess of 52 weeks	867	14	11
(1) Females	2,715	43	36	VI. Combined veterans unemployed:			
(2) Males	3,562	57	47	(1) Veterans (V)	710	59	9
Total	16,277	100	83	(2) Special veterans (SV) and Vietnam era	499	41	7
II. Head of household unemployed:				Total	1,209	19	16
(1) Females	824	19	11	VII. Labor market area unemployed:			
(2) Males	3,555	81	47	(1) New Britain	6,277		17
Total	4,379	70	58	(2) Plainville	488	6.4	83
III. Minority group unemployed:				(3) Berlin	404	5.3	
(1) Spanish	453	52	7	(4) Other	400	5.3	17
(2) Nonwhite	420	48	6	Total	7,569		
(3) Oriental	4						
(4) American Indian	1						
Total	878	14	12				
IV. Disadvantaged unemployed:							
(1) Spanish	175	23	3				
(2) Nonwhite	162	21	2.5				
(3) White	426	56	5				
Total	763	12	10				

¹ New Britain unemployed, city of New Britain only: Represents 14.2-percent unemployment rate in labor market area, New Britain labor market area employment equals 43,960.

OCCUPATIONAL GROUP OF UNEMPLOYED (JAN. 21, 1972)

Group	Amount	Percent of unemployed
1. Professional, technical and managerial	428	7
2. Clerical and sales	1,251	20
3. Service	594	10
4. Farming, fishing and forestry	48	1
5. Processing	183	3
6. Machine trades	1,452	23
7. Bench work	777	13
8. Structural work	878	14
9. Miscellaneous	576	9
Total unemployed in New Britain	6,277	100

CITY OF NEW BRITAIN OCCUPATIONAL GROUP OF UNEMPLOYED VETERANS (Jan. 21, 1972)

Group	Amount	Percent of unemployed veterans
1. Professional, technical, and managerial	135	11
2. Clerical and sales	164	13
3. Service	80	7
4. Farming, fishing, and forestry	8	1
5. Processing	32	3
6. Machine trades	214	18
7. Bench trades	37	3
8. Structural work	403	33
9. Miscellaneous	136	11
Total, unemployed veterans	1,209	100

CITY OF NEW BRITAIN OCCUPATIONAL GROUP OF UNEMPLOYED MINORITIES (JAN. 21, 1972)

Group	Amount	Percent of minority unemployed
1. Professional, technical, and managerial	21	2
2. Clerical and sales	106	12
3. Service	125	14
4. Farming, fishing, and forestry	7	1
5. Processing	68	8
6. Machine trades	201	23
7. Benchwork	129	15
8. Structural work	95	11
9. Miscellaneous	126	14
Total, minority group unemployed	878	100

City of New Britain—College educated unemployed*

Still attending:	
Business administration	17
Education	8
Accounting	4
English	4
Sociology	4
Liberal arts	4
History	3
Math	3
Art	2
Economics	2
Psychology	2
Data sciences	1
Science	1
Physical education	1
Police administration	1
Communications	1
Merchandizing	1
Marketing	1
Interior design	1
Total (1 percent of total)	61

College graduates:

BS-BA degrees:	
Psychology	7
Economics	5
Sociology	4
History	3
Math	3
Physical education	3
Biology	2
Drama	2
Education	2
Political science	1
Medical	1
Physics	1
Chemistry	1
Geography	1
Liberal arts	1
Music	1
Languages	1
Management	1
Marketing	1
Total unemployed holding BS or BA degrees	41

MS and MA degrees:

Economics	1
Math	1
Education	1
History	1
Physics	1
Counseling	1
Total unemployed holding MS or MA degrees	6

PHD degrees: Chemistry	2
Total of unemployed holding degrees (.008 percent)	49

*These statistics reflect only those unemployed individuals whose college major differed from their stated occupation.

City of New Britain—Technical, professional, managerial unemployed

Technical:	
Mechanical draftsman	7
Draftsman	11
Product designer	18
Design checker	2
Manufacturing engineer	3
Assistant engineer	6
Time study engineer	8
Electronic engineer	3
Electronic technician	5
Engineering scheduler	1
Engineer	6
Chemical engineer	1
Radio engineer	2
Marine engineer	1
Design engineer	2
Laboratory tester	6

Process planner	4
Systems analyst	3
Computer sciences	8
Metallurgist	1
Surveyor, construction	4
Radio operator	2
Medical technician	4
Aerial photographer	1

Total, technical (1.75 percent) --- 109

Professional:

Architect	2
Financial analyst	4
Credit analyst	1
Controller	1
Economist	4
Assessor	1
Accountant	21
Purchasing agent	9
Marketing specialist	3
Sales/service	5
Mathematician	4
Chemist	4
Physicist	1
Biologist	3
Social scientist	2
Political scientist	2
Lawyer	1
Security officer	1
Revenue agent	1
Commercial designer	7
Fashion artist	2
Musician	1
Communications	9
Shipmate	1
Athlete	2
Physical education/sports instructor	4
Teacher	50
Teacher's aide	2
Director/special education	1
Teacher/mentally retarded	1
Psychology/counseling	7
Employment interviewer	2
Interpreter	1
Librarian	2
Medical/dental assistant	12
Nurse	6
Pharmacist	2
Health inspector	1
Airplane pilot	2
Administrative assistant	8
Administrative contractor	2
Social worker	19
Total, professional (3.5 percent) -- 217	

Managerial:

Manager	65
Manager trainee	17
Company president	4
Production manager	3
Superintendent/construction	7
Supervisor	5
General foreman	1

Total, managerial (1.75 percent) --- 102

Total, technical, professional, and managerial unemployed (7 percent) --- 428

CITY OF NEW BRITAIN, DEFINITION OF AGE GROUP OF UNEMPLOYED

	Number	Percentage
Age group:		
16 to 20	632	10
21 to 29	2,069	33
30 to 39	917	15
40 to 49	1,071	17
50 to 59	1,320	21
60 and over	268	4
Over 45:		
Male	1,007	
Female	973	

TECHNICAL/PROFESSIONAL UNEMPLOYED¹

Category:	Amount
Medical ²	39
Computer science	14
Management	8
Psychiatry	6
Electronic technology	5
Mechanical	4
Education	4
Language interpreter	3
Photographer	3
Dental	2
Communications	2
Accounting	2
Personnel	2
Banking	1
Expeditor	1
Tax examiner	1
Market research analyst	1
Journalism	1
Total	59

¹ This is a list of unemployed individuals who possess skills and training in addition to their primary occupations.

² 85 percent of this figure is composed of nurses aides.

ARMY HELICOPTER GUNSHIP

HON. ROBERT N. GIAIMO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. GIAIMO. Mr. Speaker, one of the most urgently needed items for the Army's inventory of defense systems is the helicopter gunship.

A diversified Army helicopter gunship is needed to counter some very serious threats. For instance, in the European theater the Warsaw Pact and Soviet forces maintain a superior margin of mobility because of a greater number of armored vehicles than NATO has. However, NATO and the United States could offset or balance that edge by having mobility in the form of helicopter attack units supported, of course, by low-flying helicopter gunships.

In guerrilla warfare or counterinsurgency, the Air Force close air support systems cannot flush out the enemy as capably as a helicopter gunship can. The helicopter gunship can fly along contours at low altitudes, change to slow speeds, and, of course, move vertically and turn about in a way that provides a more accurate and timely response to the needs of ground troops. The infantry soldier's survival can be further assured.

Whereas the Air Force close air support systems can interdict from high altitudes and destroy generally defined targets, which is necessary, they cannot identify and segregate individual targets during periods of harried close combat without the support of specialized forward air controllers and a sophisticated communications system, while the helicopter gunship can provide support almost instantaneously. Helicopter gunships can support small but highly important patrols or other small engagements when it would appear too costly to provide the Air Force systems.

A helicopter gunship rides "shotgun" during an air assault. After the troops are on the ground, the gunship continues to support by fire. It stays close to the unit it is supporting and can perform as a protective lead element, or a rear guard, or it can defend the flanks. The

Air Force close air support systems must fly too fast. The main concerns of the Air Force close air support systems should be the larger obstacles which are the main impediments to an infantry unit's progress, which is why they would maintain much napalm and large rockets.

The gunship can land in an emergency. It can change its role and evacuate wounded if necessary. It can aid the commander of ground troops to reconnoiter. It can serve as a command ship.

The V-STOL quality gives the system a broad range of advantages that fit the needs of the infantry. I sincerely hope that the request for funds for the Army's helicopter gunship will be supported by this Congress.

THE GAPS IN OUR AIR DEFENSE

HON. F. EDWARD HÉBERT

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HÉBERT. Mr. Speaker, in my opinion Claude Witze, senior editor of Air Force magazine, is one of the most knowledgeable and reliable reporters on the Washington scene, and I have had the privilege of inserting several of his past articles in the RECORD.

Today I want to insert an in-depth report entitled, "The Gaps in Our Air Defense," a subject in which we all should be interested.

As you know, I immediately launched an investigation into the surprise landing of a Cuban plane in New Orleans on October 26 of last year to determine how it was able to enter our airspace undetected.

My Armed Services Investigating Subcommittee learned that there was a 1,500-mile gap in our air defense system along the southern border of the United States. Fortunately, I was able to get a commitment from Secretary of Defense Melvin Laird a short time after my subcommittee report was made public that a radar would be installed at Whitehouse, Va., to plug that gap.

Mr. Witze's article deals with our entire air defense situation, and I insert it at this point:

THE GAPS IN OUR AIR DEFENSE

(By Claude Witze)

About two and a half years ago, Gen. Seth J. McKee, Commander in Chief of the North American Air Defense Command (NORAD), was asked by the Joint Chiefs of Staff to evaluate the impact of a proposed shutdown of half a dozen long-range radars, then part of the network guarding the USA from attacks by hostile bombers.

The General's reply was that if six radars had to be closed down, for budget reasons, they should be selected from the area along the Gulf of Mexico, because that was the least critical area.

However, he added, "we will be vulnerable to embarrassment by undetected and unchallenged flights entering the U.S. . . ."

"When was that written?" General McKee was asked last November by Rep. F. Edward Hébert, chairman of the House Armed Services Committee.

The witness gave the date as September 4, 1969.

"You certainly have been embarrassed," the Congressman continued.

"Yes, Sir," was the General's answer.

The General was not alone. Mr. Hébert has been embarrassed, too, most of all last October 26, when a Russian-built AN-24 transport, out of Havana, Cuba, landed at Molsant International Airport in New Orleans. Mr. Hébert represents New Orleans in Congress, and national defense is his personal legislative bailiwick.

The Armed Services chairman had been upset previously, on October 5, 1969, about a month after General McKee wrote to the JCS. That was the day an armed Cuban MIG-17 flew undetected from Havana to Homestead Air Force Base in Florida and landed while the Presidential aircraft, Air Force One, was parked nearby.

Both incidents resulted in examinations by Mr. Hébert's committee. It was only two weeks after the New Orleans surprise that his Armed Services Investigating Subcommittee, chaired by the chairman himself, called a hearing.

The report on that session came up with these conclusions:

1. Existing US air defense is virtually useless. It is more concept than actuality.

2. In a series of economy moves, beginning in 1963, our detection and intercept capabilities have rapidly deteriorated despite a steadily increasing threat posed by submarine-launched missiles and newly developed Soviet long-range bombers.

3. Because of the failure to maintain a viable US air defense system, sovereign US airspace cannot be effectively protected from intrusions by foreign aircraft, civil or military.

4. A 1,500-mile opening in our air defense exists on the southern US perimeter between Florida and California. The area is virtually devoid of military surveillance and air defense command and control.

5. The Cuban plane incidents of 1969 and 1971 demonstrate that any foreign power can, at will, violate the southern US airspace without detection or interception. More importantly, they suggest that any enemy having the capability to attack from the south would be immune from detection and interception.

COMMITTEE RECOMMENDATIONS

The committee made two recommendations to the Secretary of Defense:

1. Accelerate the upgrading of existing outmoded and ineffective continental air defenses by inclusion of the Airborne Warning and Control System (AWACS), the Over-the-horizon Backscatter Radar (OTH-B), and the Improved Manned Interceptor (IMI).

2. Utilize, as an interim measure for southern air defenses, the OTH-B system presently available for detection and surveillance.

If Mr. Hébert seems unduly alarmed, there are more reasons for it than two airplane sorties from Cuba. The truth is that Soviet bomber flights along the fringes of North America are routine. Alaska, Canada, and Iceland are common territories of interest and the Russian flights are monitored by American and Canadian interceptors. Our Defense Department has a policy of keeping silent about this, although the Canadian government shows little reticence in this regard. At NORAD Headquarters in Colorado Springs, Colo., there is a file of motion-picture films, taken from accompanying interceptors, of innumerable examples of Russian bombers on probing flights.

General McKee makes it clear to visitors at his command post at Ent AFB, Colo., that the two Cuban flights are different only in that they terminated in the continental US. Soviet bombers fly over our fleets in the Atlantic and Pacific and skirt the continent

with regularity. They are checking NORAD's response time. They are recording the frequencies of our command-and-control systems and radars. They are giving Russian bomber crews realistic training. They are observing our naval activity.

And NORAD is not alone in facing these feints. Reports from Europe say Soviet aircraft are probing NATO defenses in the same manner. Almost daily they are testing NATO's ability to react. The British Royal Air Force sees a great deal of Russian Bear and Badger bombers, many of them headed for Cuba. In Castro's country they not only can receive fuel and maintenance, but they profit from the experience of navigating and operating at the edge of the United States.

Like General McKee, Mr. Hébert is interested in broader aspects of the problem than those dramatized by the Cuban act in his own front yard.

In his report on the most recent hearing, the chairman points out there has been little change in our concept of air defense since the late 1950s, when Russian bombers were the only threat. Since then, the missile has assumed stature as a strategic weapon, "although the bomber threat has not significantly diminished."

At the same time, the report says, to save money, air defense forces on the continent have been cut sixty percent. It fixes 1963 as the start of this degeneration. As money became scarcer, the decision was made to deplete the southern defense ring in favor of the northern borders.

SURPRISED REACTION

Out in Colorado Springs, a component neighbor of NORAD is USAF's Aerospace Defense Command, headed by Lt. Gen. Thomas K. McGehee. General McGehee sounds a little surprised when he talks about the reaction in Congress to a couple of episodes in which the southern defense ring has been penetrated by airplanes from Cuba. He points out that there was little objection in Congress back in 1963 when the first steps were taken. According to the General's recollection, the first surveillance radar to be dismantled was in Texas. And the only Congressman to complain with vehemence was Edgar F. Foreman, a Texas Republican and Armed Services Committeeman. When the radar was taken out, the hole was called "Foreman's Gap."

Now the gap is about 1,500 miles long, and the Cubans know it can be penetrated with ease. The aircraft that landed in New Orleans last October—Mr. Hébert says it was flown in by Fidel Castro's personal pilot—was designated Cubana 887. Early on the morning of the flight, the Havana Air Traffic Control Center filed an instrument flight rule (IFR) flight plan for a proposed trip from Havana to New Orleans. The message designated the flight as Cubana Special One, not Cubana 887.

This flight plan was filed directly with the Federal Aviation Administration's switching center at Kansas City, Mo., and relayed at once to centers at Houston and Miami as well as the New Orleans International tower. Word also was passed on to NORAD, FAA headquarters, and the State Department. The plan called for Cubana Special One to depart Havana at 9:00 a.m. with estimated arrival in New Orleans at 11:59 a.m. Intended airspeed was 240 miles an hour at an altitude of 14,000 feet.

The Cubans violated a couple of regulations right at the outset. There is a rule, instigated by the State Department and presumably enforced by FAA, that says any flight from Cuba is required to file its flight plan five days in advance. This wasn't the case and when FAA asked Havana if Cubana Special One had taken off, FAA was told it had not departed. In fact, Cubana 887 had already been in the air about forty minutes. On top of this, at no time was FAA told how

many passengers were aboard or their identification. Mr. Hébert says one of those aboard was the chief of Castro's central intelligence organization.

"There is no evidence," the Armed Services report says, "that any of the US authorities advised the Cuban authorities that the flight plan filed by Havana failed to conform to US requirements in at least two important respects and, therefore, would not be approved."

STICKY MATTER

On the morning of October 26 there was another sticky matter in the news about Cuba that obviously had a bearing on how FAA handled what turned out to be Cubana 877. Washington was concerned about an American Airlines 747 and 235 passengers that had been hijacked to Havana and kept there more than two days. James Murphy, Director of the Office of Air Transportation Security, was the man in charge of the problem on the morning of October 26. Under questioning, he was asked whether he challenged the Cubans when they failed to give five days' notice for the flight.

"We were having a hard time with the Cubans that particular day," Mr. Murphy replied. "The night before—because of the American 747 and 235 people on the ground—the Havana Center told the Miami Center to stop bugging them. They didn't want any more transmissions. We tried to be very selective in communicating with Havana Center until it really counted."

Mr. Murphy said he waited until fifty-three minutes after the flight plan called for Cubana Special One to have taken off, then ordered Miami to ask whether the aircraft had taken off or not. He suspected, by this time, that Cubana Special One had something to do with the hijacked airplane and the release of the Americans aboard. He said, "We were urging the State Department and other elements to treat the Cubans with courtesy and consideration on their arrival" because he did not want to jeopardize the release of the 747 and the Americans aboard.

As for Cubana Special One, the inquiry found Havana replied to Mr. Murphy's query at 9:54 a.m., saying the aircraft had not departed. Later evidence showed Cubana 877 had taken off at 7:15 a.m. and was in the air for thirty-five minutes before the flight plan was filed. It arrived in New Orleans at 11:17 a.m., nearly an hour earlier than the arrival time estimated in the flight plan for Special One.

The first knowledge US officials had of an impending arrival was a request for landing instructions received at New Orleans International at 10:57 a.m. The aircraft identified itself as Cubana 877 and said it was twenty-five miles away at 4,000 feet. Cubana 877 was cleared for landing at 11:12 a.m. There is no further reference to Cubana Special One.

Who was on board? Twenty-one Cubans who said they came to town to attend an International Sugar Cane Technological Conference. In addition to arriving without an approved flight plan, they had no US visas for admission to this country.

The uninvited and unannounced Cuban guests were put up, for a couple of days, at a Hilton Hotel adjacent to the New Orleans airport. Then they were moved, to quarters that were less expensive to the US government. They spent the next half-dozen days at the Belle Chasse Naval Air Station, where they were bedded down in—of all places—the F. Howard Hébert Bachelor Officers Quarters. From here, they were sent home, without a taste or smell of sugar.

STATE NOT SPARED

The committee report does not spare the State Department. Kenneth M. Smith, FAA Deputy Administrator, testified that "we got nowhere" in first efforts to find out whether any visas had been issued.

An hour and twenty minutes after the proposed departure of Cubana Special One, the word came back from State that visa applications for the sugar-cane conference had been denied about a month earlier.

As a matter of fact, the State Department had known for over a year that Cubans were making a determined effort to attend the conference. The Armed Services Committee argues that State "should have brought this information promptly to the attention of all agencies concerned with national security, in order to insure a ready response to a possible illegal entry. However, although the problem was discussed over a period of months, there is no evidence that either NORAD or CONAD was advised of the pending problem or that any contingency plan had been agreed upon."

Further, in discussing NORAD's participation, the report concludes that it was exactly eight minutes after the Cubans had departed at New Orleans that the command had a call from the State Department representative at the National Military Command Center. The message: Due to Soviet Prime Minister Kosygin's arrival in Cuba that day, the Havana airport was closed and the proposed flight—of Cubana Special One, later Cubana 877—could not take off.

"Under these circumstances," the report says, "it would not be too difficult to understand why NORAD might have been less than certain as to what, if anything, it should do."

General McKee's attitude was stated, loud and clear, on the stand. He was asked whether he was of the opinion that the Cubans really were headed for the conference on sugar, or "did they have something else in mind?"

The answer was that from the way the flight was conducted and the fact that it was not detected "indicates to me that they underflew our radar, which did give coverage in the Cuban area. Also, since they didn't report in at the mandatory reporting points as they should have done, it is my opinion they didn't want us to know they were there until they arrived."

The General was reminded that even though he doesn't have the equipment, he has the responsibility.

"If they had come in, let's say, and dropped bombs or something or other, you would be the fellow that would be on the pan, would you not?"

The General replied this was most likely.

General McKee raised a point of his own about the State Department's requirement for five days' notification of unscheduled flights from Cuba to airports in the U.S. There had been a long discussion about it, and the USAF captain who got the first word on October 26 testified that he did not know of the requirement.

"That response might have led you to believe that others of us were aware of that requirement," General McKee told the hearing. "The facts are that I was not aware of it, and I have been unable to determine that anyone in NORAD was aware of it."

JCS CHAIRMAN

There were two star witnesses heard on the subject of air defense capabilities. In addition to General McKee, the committee had a long session with Adm. Thomas H. Moorer, Chairman of the JCS.

The General reviewed the role of CINCNORAD and his responsibilities to the President, the Prime Minister of Canada, the JCS, the Secretary of Defense, and their military counterparts in Canada. NORAD is binational; it uses the strength of USAF's Aerospace Defense Command (ADC), the Canadian Forces Air Defense Command, and the U.S. Army Air Defense Command.

Back in 1958, when NORAD was established, it had substantial forces. What has happened since then is shown in this tabulation:

NORAD WEAPONS

	1960	1971
Nike/Hawk batteries.....	270	63
Fighter squadrons (Reg.).....	65	14
Fighter squadrons (ANG).....	38	15
Bomarc squadrons.....	9	7
Total.....	382	99

By June 30, 1972, the fourteen regular interceptor squadrons will be cut to nine and, by June 30, 1973, reduced again to seven, half of the 1971 strength. The Fiscal 1973 proposed budget, sent to Congress in January, also indicates the Army's surface-to-air batteries will be depleted to only twenty-one. The number of Bomarc squadrons already stands at five instead of seven.

NORAD RADARS

	1960	1971
Long-range radars.....	187	99
Gap fillers.....	105	0
Total.....	292	99

In the same time period, personnel assigned for air defense of the continent were reduced by about sixty percent, from 246,720 to 94,575.

In his testimony, General McKee emphasized that he does not have forces to cover our southern approaches. There are from four to six interceptors on alert at Homestead AFB in Florida. He said that in the past year the 20th NORAD region, which is responsible for air defense of the southeastern U.S., has detected a total of 176 unknown aircraft.

"I can say," he told the committee, "that our anti-bomber defense systems are obsolescent and generally nonexistent along our southern border. We still have precisely the same types of weapons that we had in the early 1960s, but they are now ten years older, and we have them in far fewer numbers. In spite of this phase down in weapons and personnel, CINCNORAD's responsibilities have not diminished."

PRIORITY DEPLOYMENT

Later, the General said he must use what he has on a priority basis. Russia has the capability to threaten our survival and that is why his limited arsenal is deployed the way it is. He said the master plan drawn up in 1967 was based on the premise that the savings achieved by phasing down the system would amortize the procurement of a more modern defense force.

It was repeatedly pointed out that the decisions to phase down air defense are made by the Joint Chiefs of Staff and "at a higher level." NORAD gets its orders from the JCS. The Hébert hearing called Admiral Moorer, JCS Chairman, to testify.

The Admiral, always a blunt witness on Capitol Hill, made no bones of the fact that "fiscal realities" dictate some JCS decisions. He said the big threat from Russia lies in their nuclear missile capability; their bombers could strike targets in the southern states, but better options are in hand at this time.

So far as Cuba is concerned, Admiral Moorer testified that it has Russian MIG-17 and MIG-21 aircraft, the latter with an operating radius that would permit attacks no further away than Florida. American deterrent power, the Admiral believes, is enough to eliminate the risk of such an assault. He indicated the JCS still stands in support of the air defense modernization program drafted in 1967. Under questioning he gave the anticipated operational dates for the OTH-B, IMI, and AWACS projects. The dates were deleted by the censors.

For the improved interceptor, Admiral Moorer suggested, probably for the first time in public, that either the Navy's Grumman F-14 or the USAF McDonnell Douglas F-15 could fill the bill. In Colorado Springs, General McGehee indicated to this reporter that ADC has been working on a proposed modification of the new USAF aircraft, the F-15 that can fill the requirement later in the 1970s.

In his testimony, Admiral Moorer somehow did not seem to share the distress of General McKee and Congressman Hébert over their embarrassment at the violation of our airspace and regulations by Cubana 877. He was asked what he would do if he had more money. "Would you fill this gap as a top priority, or put it somewhere else?"

The Admiral replied that he would favor more modernization.

"You might procure the AWACS aircraft, for example, when it becomes available, so that it could be redeployed quickly to establish a barrier along the southern area in order to prevent these single-plan run-ins.

"I think you are always going to have the possibility that a single plane flying on the deck can penetrate almost any system that you could develop. It would be very expensive indeed to build up a system in this area that [would be] 100 percent leakproof. It would be very expensive for the purpose of intercepting one or two aircraft a year, if you consider these priorities that I have discussed.

"On the other hand, I realize fully the psychological impact and the need for the United States to protect this airspace. It is a highly desirable capability, as I have said. But at the rate we have been reducing the defense budget, and viewing at the same time the condition of the current air defense forces, I would have to look at the problem in totality to see just where we should put the money."

It was suggested by Rep. Samuel S. Stratton of New York that the Cubans might attempt an attack against a US target and Russia would intervene by threatening nuclear war if the US retaliated.

The Admiral said he does not think the Kremlin would be willing to trade Moscow for New York in order to support Castro "on such a junket as these MIGs might indulge in." He puts his faith in continued deterrent power.

STORED RADAR

It was while Admiral Moorer was testifying that the inquiry learned there is a backscatter radar (OTH-B) in storage. In early December, at the final session of the Armed Services hearing, witnesses were called from the Office of Naval Research and the International Telephone & Telegraph Corp. (ITT) to discuss the status of this project. A vast amount of the testimony was deleted by Pentagon censors, upon publication of the transcript. What was learned is best summarized in the committee report:

"The brightest spot in this depressing picture was supplied by certain military and civilian witnesses, who testified that Over-the-Horizon Backscatter (OTH-B) radars are in operation overseas today, and have been for some time, and such a unit is now available to provide immediate detection capabilities along our southern perimeter," the report says.

"Experiments with OTH-B detection systems have been conducted since the late 1940s; but at that time results were inconclusive as to their value for military purposes. In the late 1950s, greater attention was directed toward the development of OTH capabilities when the Navy proved it could detect nuclear testing. In the early 1960s, the Navy constructed an OTH-B and began reporting missile launches, as well as nuclear testing.

"Later, techniques were developed to detect aircraft and cruise missiles that can be launched from submarines. The operational capability of OTH was proven in the deployment of such radars overseas. Confirmation of the OTH capabilities has led to plans to develop a sophisticated OTH-B system for US air defenses to be operational in the mid-1970s. However, a used system, which is now available, can provide interim detection capabilities along our southern perimeter."

The report continued:

"Estimates provided by industry witnesses indicated that coverage of the Florida Straits, and practically the entire Gulf of Mexico by the existing OTH-B radar, can be achieved in six months. They also testified that the first-year costs, including refurbishment, installation, and site preparation, as well as one year of operational manning, are estimated at \$5.7 million.

"The subcommittee urges the Department of Defense to take immediate action to install the presently available OTH-B at a location that would close the gap in our southern defense perimeter. The subcommittee also urges the rapid development, procurement, and deployment of the improved OTH-B to insure the integrity of our entire CONUS defense detection capability. This, of course, is but the first step in the critically needed upgrading of our CONUS defense which, in addition, must also include the new Airborne Warning and Control System (AWACS) and Improved Manned Interceptor (IMI).

"These two systems can also be operational by the mid-seventies and, when used in connection with the OTH-B, can give this country real defensive security. This must be accomplished with all speed, for each passing day makes more dangerous 'the calculated risk' which has been permitted in the name of economy."

What the report failed to point out in this otherwise revealing summary of OTH-B capabilities is that the new advance in radar contributes to more than our defense against intrusions by airplanes, be they bombers or irritating little flights like that of Cubana 877. The OTH-B, once fully operational, will be part of the continent's strategic warning system.

A NEW SOVIET BOMBER

In recent months, the Russian surge to achieve nuclear superiority has been well publicized. *Jane's Weapons Systems*, published last November, reported that the Soviet Union has "overtaken, and in some cases surpassed, the West in developing missiles and other weaponry." More recently, there was the appearance of a new bomber, named "Backfire" by NATO. *Jane's* says it is supersonic with a low-altitude capability at no loss of speed. Also, that "the approximately equivalent US B-1 bomber project is only at the mockup stage, while Russia has two Backfire prototypes flying."

In Colorado Springs, air defense experts argue that the Russian aircraft now in use for offshore missions near North America are a credible threat to the United States. Heaviest is the TU-95 Bear, with an unrefueled range of about 8,000 miles. It can carry a 25,000-pound bomb load.

The commercial version of this airplane, the TU-114, regularly flies nonstop from Havana to Moscow. Bear bombers fly nonstop Moscow to Havana in seventeen hours—that trip has become routine. They are turbo-props.

There is a smaller, medium-range Soviet bomber called the Badger, frequently seen off Alaska, and a supersonic medium-range bomber named Blinder. The Defense Department estimates there are 750 aircraft in these two classes, plus 110 Bears and ninety Bisons, an older all-jet bomber.

The credibility of this threat is accepted

at NORAD and obviously is of major concern to the Armed Services Committees of both the House and Senate. No report is complete, however, without reference to the skepticism that prevails in other key areas.

It suffices to call attention to last year's hearings of the Subcommittee on Defense Appropriations of the Senate Appropriations Committee. The Chairman is Allen J. Ellender, who hails from Louisiana and is a political neighbor of F. Edward Hébert.

Mr. Ellender, who has visited Russia and considers himself something of an expert on that country, its intentions and capabilities, says "they are not building bombers to any extent." He says the force they have is old and he fears that "the moment we start building the B-1 . . . they are going to go back and try to imitate us.

"I have contended all along that we have put Russia on the defensive for the last fifteen or twenty years. That is what we have done. That is why you see so many Russian ships in the Mediterranean. We have been in the Mediterranean for twenty-two years, and they just recently have come there."

The hearings were held last April, but the censored transcript was released only about the first of this year. In it, Chairman Ellender engaged in exchanges on Russian military stature with Grant L. Hansen, Assistant USAF Secretary for Research and Development, and Lt. Gen. Otto J. Glasser, Deputy Chief of Staff for R&D.

Mr. Hansen pointed out that the F-106 air defense interceptor is fourteen years old. That situation must be remedied and other R&D money for the next few years must go to finish development of the B-1, the F-15, the A-X, and AWACS. There are other items essential to our defense, including better surface-to-air missiles, optically aimed weapons, improved reconnaissance devices, unmanned observation platforms, and relays for guidance and control. So far, there is no development program for the IMI.

Mr. Ellender's response was to recall the history of the North American B-70 bomber. He said the project was stopped because the Russians improved their high-altitude defense system, which also forced the US to alter B-52 tactics and put the aircraft on the deck. "How do we know," the chairman asked, "they won't develop a low-altitude defense system that will counter the B-1's low-level capabilities?"

The response was that the B-1 will be versatile; it can go high and fast, and go low, using sophisticated penetration aids.

Facing General Glasser, who outlined the case for OTH-B and AWACS, the Appropriations Chairman challenged the spending of "tremendous sums" for a warning system aimed at Russian bombers, arguing that it escalates the arms race. Again, he depreciated the threat from Russian bombers.

General Glasser testified that the OTH-B proposed funding for Fiscal 1972 was \$3.6 million, added to prior funding of \$8.6 million. Then there was this revealing exchange:

Chairman ELLENDER: In view of the limited threat against the continental United States, just why do you feel it necessary to spend all of these funds to develop new aircraft warning systems?

General GLASSER: As you know, we have hard evidence of a bomber prototype, which is well advanced in the Soviet Union and which could be in production long before we would be able to put in these reactive defenses.

Chairman ELLENDER: That has been going on for several years?

General GLASSER: Yes, Sir.

Chairman ELLENDER: When we develop a new weapons system, the Russians emulate us or develop a countermeasure to our action. The development of the B-1 may well ac-

celerate the development of more sophisticated Russian bombers. Don't you agree?

General GLASSER: I am not in a position to agree with you, but I would have to point out that it would be reckless of us to engage in unilateral disarmament.

This discussion, essentially about the chicken and the egg, is going to be continued in 1972. Considering the opinions of Mr. Hébert, Generals McKee, McGehee, and Glasser, Admiral Moore, and Mr. Ellender, the debate is not likely to wane.

The right answer could be dictated in Moscow.

Until it is, the NORAD command and Congressman Hébert appear to be the only principals truly embarrassed by such events as the flight of Cubana 877.

THE NEW YORK TIMES AND NEW YORK POST SCORE PRESIDENT NIXON'S BUSING STAND

HON. WILLIAM F. RYAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. RYAN. Mr. Speaker, President Nixon's message to Congress concerning the busing of children to achieve racial balance in schools failed to provide the Nation with the leadership it needs to deal with this highly charged emotional issue. Instead of reminding the American people that a clearly established line of Supreme Court decisions, starting with *Brown* against Board of Education in 1954, requires the integration of schools and the dismantling of the dual school system, the President chose to align himself with those who make political capital out of racial distrust and discord.

The proposed moratorium on all new or additional busing orders would be a legislative usurpation of judicial power, which at the least would provoke a constitutional crisis. It is a direct assault upon the Supreme Court's desegregation decision and should be rejected.

Two of New York City's major newspapers, the New York Times and the New York Post, have in editorials on March 18 forthrightly scored the President's decision to extract maximum political capital from the busing issue.

Both of these editorials which point out how the President is confusing the issue, lucidly and cogently discuss the busing question; I commend them to the attention of my colleagues:

[From the New York Times, Mar. 18, 1972]

FALSE BUSING CRISIS

President Nixon has snatched the anti-busing ball off the muddy field of Florida primary politics and is trying to carry it to a November touchdown, whatever the price in national division. In his televised address Mr. Nixon rejected demands for a Constitutional amendment to ban school busing, not because it would trivialize the Constitution, but only because "it takes too long."

With a strident appeal for "action now" that lent a President imprimatur to the hysteria already distorting this issue, Mr. Nixon has asked Congress to pass legislation that would "call an immediate halt to all new busing orders by Federal courts."

Far from adding perspective to the argument, the President further confuses it by inveighing against the busing of children over long distances to inferior schools "just

to meet some social planner's concept of what is considered to be the correct racial balance. . . . He wants to save a generation of children from the policies of those who are putting "primary emphasis on more busing rather than on better education."

All this paints an alarming picture of a reality that does not exist. No new legislation is required to prevent the courts from mandating racially balanced schools. In a unanimous ruling based on an opinion written by Chief Justice Burger last April, the Court upheld busing as a means of dismantling dual school systems. At the same time, however, the Court stated explicitly that it had neither mandated nor considered desirable the establishment of a racial balance or of any "fixed mathematical norms."

The Burger ruling stressed that, where there was no history of discrimination, "it might well be desirable to assign pupils to schools nearest their homes." It specifically questioned the wisdom and propriety of transporting children over long distances.

Thus, it is clear that the Supreme Court does not require the kind of indiscriminate busing Mr. Nixon wants to outlaw. No legislation is required to prohibit a Federal court from ordering what the Supreme Court has already declared undesirable. Mr. Nixon must surely know that the principal aim of desegregation is to allow children who have been confined to inferior schools to be given access to superior ones, and not vice versa. Many children moreover have long been bused over long distances, in order to maintain segregation.

The President's second proposal—the Equal Educational Opportunities Act of 1972—aims at improving schools now attended by poor children, in other words primarily the segregated schools. This is what desegregation was all about in the first place. It is in those districts which have failed in the nearly two decades since the historic *Brown* decision of 1954 either to desegregate or to improve the schools attended by black children that Federal courts have been driven to order busing.

There is little in the President's call for spending \$2.5 billion to upgrade poverty schools that is not already contained in the Elementary and Secondary Education Act of 1965. Regrettably, neither the Federal Government nor many state and local school authorities have shown the will and skill to put the act and the funds to effective use.

President Eisenhower made little secret of his personal coolness toward the 1954 desegregation ruling, but he enforced the law as defined by the Court to the limit of his Presidential power. When the Chief Executive now appeals for legislation to limit the authority of the judiciary, he tampers with the foundations of government under law; for he diminishes the capacity of the courts to gain voluntary and peaceful compliance for their rulings. Such compliance is never more vital than in times of deep social conflict. It is an asset not to be squandered for temporary political gain.

[From the New York Post, Mar. 18, 1972]

THE POLITICS OF DISCORD

President Nixon's special message to Congress contains some elaboration and even modification of his televised address on school busing. But it does not alter its basic thrust. Mr. Nixon has clearly chosen to extort maximum political dividends from the tensions surrounding the living controversy and forfeited another chance to assert courageous moral leadership. In a situation that cried out for reason and reconciliation, he has let down many men, women—and children—who have been conscientiously striving to find an honorable common ground, including his own Senate leader, Hugh Scott (R-Pa.).

But before commenting on either his prose or his proposals, let us begin by saying it

would be a misfortune if Mr. Nixon's opponents were to fall into the trap of allowing him to convert this issue into the central argument of 1972.

The tragedy is that the busing controversy has been—and apparently will continue to be—a cruelly diversionary, divisive conflict. No matter how it is resolved in the legislative arena at this juncture, the Supreme Court will still be heard from. Mr. Nixon is deluding the country by suggesting that the program he outlined can be imposed overnight.

Moreover, and perhaps more important, regardless of the immediate legislative result, the deep unrest and frustration afflicting so much of America will remain essentially unchanged. The drug plague responsible for much of the nation's crime—inside and outside the schools—would not be remotely affected by the stoppage of the buses. No jobless Vietnam veteran would gain employment. Explosive economic inequities would be unaltered. And the distortion of national priorities embodied in the military budget would remain a flagrant example of conspicuous human waste.

Mr. Nixon could have performed a momentous mission by placing the problem in such perspective rather than injecting new emotionalism into the debate. He could have recognized and saluted the areas—especially in the South—in which busing has proved to be an entirely positive weapon in achieving both desegregation and quality education. He could have recalled the long, sad history of the busing of black children to maintain segregated schools.

But he did none of these things. While professing to discern the complexity of the problem, he offered simplistic—and largely spurious—answers little different from those George Wallace had proposed. He delivered a harsh blow to the thoughtful leaders of the black community who have been striving to resist the new tide of separatism in their own ranks. He derisively assailed the "social planners" whom he seemed to accuse of insensitivity to the unease of parents and of a mindless attachment for the busing process. But it was a Republican Chief Justice named Earl Warren who presided over the court in the celebrated case that is now the real center of the storm.

Mr. Nixon depicted himself once again as a man walking the "middle ground" between rival extremists. If that were truly his position, he would have backed the Scott-Mansfield amendment approved by the Senate.

That amendment essentially borrowed the language used by Chief Justice Burger last April when he declared objections to busing became valid "when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."

These words are responsive to the concern voiced by parents in situations where busing plans would expose children to manifestly hazardous areas and inferior schools. While such provisions might be subject to abuse, they appeared to reflect a consensus of moderate, responsible Senate opinion.

Mr. Nixon's moratorium is far closer to the essence of the rejected Griffin amendment and plainly raises grave issues of constitutionality. For while Griffin urged a permanent busing ban—rather than a moratorium—the principle of legislative usurpation is the same.

If the President had aligned himself with the Scott-Mansfield position and advanced a program for genuinely expanded school aid, he could have justly portrayed himself as a voice of restraint and affirmation. Instead he has chosen a course that invites repudiation by the Chief Justice he appointed. He has appeared to resurrect the doctrine of "separate but equal."

Perhaps worst of all, he has helped to promote the delusion that the country can find the way to peace and tranquillity by stopping

new buses for 15 months. He has set the stage for a long, bitter, distracting legislative struggle. That is the most melancholy aspect of this dismal interlude.

JUDGMENT OF TV EXECUTIVES AND NEWSCASTERS QUESTIONED

HON. F. EDWARD HÉBERT

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HÉBERT. Mr. Speaker, the judgment of television executives and newscasters was brought into question most ably recently in a speech delivered by Mr. J. L. Robertson, Vice Chairman of the Board of Governors of the Federal Reserve System.

His remarks deserve wide distribution, and for that reason I am inserting them at this point in the RECORD:

THE CREDIBILITY CRISIS

(By J. L. Robertson)

In searching for a subject for my remarks here, it occurred to me that since, in the formulation of monetary policy, I have been in the front lines longer than anyone else—more than two decades—I should say something about the economy, perhaps pinpointing the mistakes of the past, explaining how we got to where we are, and indicating where we go from here. But the more I thought about it, the more certain I was that that objective was not a good one. At least with respect to where we go from here, the papers are full of prognostications—some by persons whose only qualification would seem to be an academic degree. I think all I need to say to you on that subject is that, at long last, the fallacious and enervating doctrines of "gradualism" and "benign neglect" have been discarded—unfortunately, at the cost of price and wage controls—and that we are now headed in the right direction. Given time, the psychological attitudes of businessmen and consumers will change for the better. The wisdom and steadfastness with which we formulate and adhere to sound monetary and fiscal policies, while awaiting those changes in attitude, will determine not only the extent to which we succeed in reducing both inflation and unemployment, but also the time when we can safely dispense with controls.

Having given up that objective, I turned to another. I thought perhaps the Hunt Commission Report would meet my needs. But the more I read that report, the more inappropriate it seemed, because the good and bad ideas are so intertwined and knotted together that it is almost impossible to unravel them. In this political year, I am sure Congress will not be able to do so. Why should I impose on your time to discuss them now? Besides, few of you have any doubts about my views on any portion of the report. And so, again, I changed objectives.

The other day a play opened in Philadelphia called "The Selling of the President", in which the candidate is portrayed as having been born and raised in Broken Bow, Nebraska, my home town—a town about which bankers have been hearing for as long as I have been making speeches. The play is based on the book, "The Selling of the President 1968", by Joe McGinniss. I read that book and Broken Bow was never mentioned. Why was it injected into the play? My guess is that the playwright is a banker on the side who is utilizing what he learned at your conventions to get to Broadway—or, perhaps, to enhance the credibility of his play.

Credibility is what I want to talk about today. We have heard a lot about credibility gaps in recent years. But I would put it more strongly. Our society is suffering from a credibility crisis. It affects the political world and the business world. It is a grave problem for our communications media. Our educational institutions and even our family life are touched by the growing lack of trust and confidence.

Some efforts have been made to augment credibility in the business world by enacting legislation. You in the banking business have been touched by this through the Truth in Lending Act, which has been under my wing from its inception. We are now seeing a major governmental effort to get a higher degree of truth in advertising. It must come as a great shock to many of the denizens of Madison Avenue to be confronted with demands that they both explain what they mean and provide proof when they claim that brand X is 20 per cent faster or brand Y lasts 10 per cent longer. Those percentages always remind me of Chinese economic statistics—they sound fine but you seldom know what the base is.

I do not know whether this drive for truth in advertising will ever get to the point where a certain newspaper is asked to prove that it really gives its readers "all the news that's fit to print," or whether a certain magazine will be asked to provide the statistics that will show that it really is "the world's most quoted news weekly". Probably not. One of the strange facets of the tell-the-truth campaign is that it has the enthusiastic support of most of the mass media, as long as it does not apply to them. The media agree that you bankers should be scrupulously honest in informing your customers about your interest charges. At the same time, some of them contend that "freedom of the press" gives anyone who has access to a printing press or a microphone the right to lie and deceive, even if those lies are part of an effort to incite people to perform illegal acts, such as blowing up banks.

Examples of this curious double standard are not hard to find. One government agency, the Food and Drug Administration, is willing to use the full force of the law to stop an advertiser from exaggerating the effectiveness of its mouthwash in combatting cold germs. But another agency, the Federal Communications Commission, was apparently unwilling to even so much as slap the wrist of a powerful television network for showing its vast audience a baby that (according to the network) was dying of starvation, when the actual cause of death was premature birth and had nothing to do with malnutrition.

The protective mantle of the First Amendment to the Constitution has been draped around such varied activities as peddling pornography, pushing pot, and advocating arson, but it has not been extended to provide protection to those who would stretch the truth in their efforts to sell mouthwash or gasoline. Perhaps it is felt that the mendacity of Madison Avenue is a greater threat to our well being than the intellectual drift of the pushers of drugs, debauchery, and destruction. But a consequence of our unprecedented tolerance of dissemination of destructive falsehood is the growth of the great credibility crisis that now confronts us.

We find the communications media being used to undermine the credibility of everyone who represents authority, whether it be the government official, the business leader, the police, the school teacher, or the mere parent. In turn, the credibility of the media is called into question, and the public regards with increasing skepticism what they are told by the press and the broadcasters. An ace political correspondent of the *Washington Post* put it this way:

"The measure of the failure of the newspapers is the open skepticism and even deri-

sion with which they are viewed by their customers.

The press has as big a credibility gap as any institution in this society."

A well known liberal academic, with extensive experience in high government positions, Daniel Patrick Moynihan, has voiced deep concern about the degree to which irresponsible behavior on the part of the news media is making it difficult for our government to perform its assigned tasks effectively. In an article published last year, Mr. Moynihan said:

"Hence the conditions are present for a protracted conflict in which the national government keeps losing. This might once have been a matter of little consequence or interest. It is, I believe, no longer such, for it now takes place within the context of what Nathan Glazer has described as an 'assault on the reputation of America . . . which has already succeeded in reducing this country, in the eyes of many American intellectuals, to outlaw status . . .'. In other words, it is no longer a matter of this or that administration; it is becoming a matter of national morale, of a loss of confidence and nerve, some of whose possible consequences . . . are not pleasant to contemplate."

We can see those consequences emerging already. On the one hand, there is a growth in the number of cynics who believe nothing; on the other, we see an increase in the number of "true believers" who are guided by nothing but their own unshakable convictions. The cynics are bogged down in apathy and indecision. The true believers are fired with fanaticism, not tempered with knowledge. The ability of our people to cooperate to promote the general welfare is vastly diminished, as we find it increasingly difficult to reach agreement on what the general welfare is.

For example, virtually every country in the history of the world, including ours, has always placed high priority on maintaining its ability to defend itself against potential enemies. This priority was well stated by Adam Smith two hundred years ago when he wrote in *The Wealth of Nations*: "Defense is much more important than opulence."

When Smith wrote those words, no one enjoyed much opulence in terms of present day standards. It is shocking that in a society that has more motor cars, television sets, air conditioners, etc., etc. per capita than any country in the world, the cry is going up that we cannot afford to spend the money required to provide ourselves with an adequate defense against our potential enemies. We are told that we must reorder our priorities and that national defense must be shoved far down the list. This is not just the cry of some "lunatic fringe". It is a scheme that is put forward by serious contenders for high political office. It is supported by influential newspapers and by some of the most influential voices heard on that powerful medium, network television.

I do not question their motives, but I do question their judgment, and I am shocked by some of the methods that they employ to influence public opinion. Let me cite a couple examples of the methodology.

A few months ago one of the best known TV commentators in the country told his vast audience that two-thirds of the regular tax income of this country was spent on the military. He compared this unfavorably with the old state of Prussia, which he said was criticized around the world for spending half of its income on the military. The implication was that the United States is more militaristic than Prussia was in its hey-day.

The statistics used by this commentator were incorrect. In the last fiscal year, our expenditures on national defense amounted to a little over 40 per cent of the revenues of the federal government. This year it is estimated that defense expenditures will

amount to less than 36 per cent of federal revenue—a far cry from the figure of two-thirds used by the television commentator. After his figures were challenged, the commentator attempted a lame justification which made little sense. He and his network refused to correct the misleading impression that was given to the estimated fifteen million people who heard the original broadcast. They refused to even acknowledge the fact that a far more valid measure of the relative defense burden carried by different countries is the ratio of defense expenditures to GNP. They have not informed their audience that in the last fiscal year the total defense expenditures of the United States amounted to just a little over 7 per cent of our GNP, the lowest this ratio has been for many years.

The commentator in question makes no bones about the fact that in his judgment the United States spends far too much on defense. He is one of those who wants to see our priorities drastically reordered. He appears to overlook the fact that it will not be Americans who reorder our priorities if we so weaken our defenses that we are unable to protect ourselves from an attack. However, he is entitled to his judgment. What he is not entitled to do, in my opinion, is to use his privileged position as a national television commentator to persuade others of the correctness of his judgment by feeding them false information.

The president of CBS News would appear to agree, because a few years ago he made this statement:

"Anybody in news who is unfair, biased or inaccurate—deliberately or negligently—despoils his journalistic heritage and demeans his profession."

That is a fine statement. Unfortunately, however, it would appear that it is not invariably heeded even in his own organization. You may recall that a year ago CBS broadcast a documentary called "The Selling of the Pentagon", which aroused great controversy. This CBS production has probably been charged with more inaccuracy and bias than any comparable television production to date. I will cite only one example, not the most important, but one which is indisputable because it involves the use of false statistics.

In introducing the theme of huge Defense Department expenditures on public affairs, CBS noted that about \$30 million a year was budgeted for such expenditures. However, it pointed out that an "unpublished" study by the prestigious Twentieth Century Fund had estimated that such expenditures might be as high as \$190 million. CBS displayed a graph showing that this was more than all three television networks combined spent on their news programs. However, investigation by the critics revealed that at the time the CBS program was aired, the study by the Twentieth Century Fund had been published and that it contained no such figure.

On the contrary, it said that no accurate estimate of total Defense Department spending on public affairs could be made. Although one of the papers prepared for the study had included the \$190 million estimate, the Twentieth Century Fund had not wished to lend its prestige to a figure that it did not consider to be reliable. The Twentieth Century Fund dropped it, but CBS did not. Whether this inaccuracy was deliberate or negligent I cannot say, but to borrow the words of the CBS official I just quoted, those responsible for it demean their profession. What is sadder still is that CBS has admitted the facts but has not to this day apologized for the inaccuracy or corrected the misinformation which it disseminated.

However, the most important criticism of this particular TV production centers on the basic veracity of the documentary.

There are those of us who think that if the taxpayer is to be asked to support a defense program that costs around \$80 billion a year, the government has a responsibility to tell him why it is necessary and what is being done with his money. CBS rejected that viewpoint so completely that it made no mention of it whatsoever in its documentary. The basic issue at the heart of this program was never debated. CBS assumed that expenditures to inform the public about the need for national defense were unnecessary and then went on to show that they were being made, implying that it was showing the public examples of illegitimate and wasteful activities. It seems safe to infer that what the producers wanted to accomplish was not the trimming of a few million dollars from the Defense Department budget to save the taxpayers money. They were clearly after bigger game. If the government could be denied the right to finance an information program to maintain public support for national defense, then those such as the commentator I discussed earlier would find it much easier to win public support for really huge cuts in our national defense. The documentary clearly implied that we no longer needed to be as concerned with national defense as we once were, since we had been living in an era of peaceful co-existence for over a decade. That decade, I might note, included such events as the building of the Berlin Wall, the Cuban missile crisis, the Vietnam War, and the Soviet invasion of Czechoslovakia.

I call these matters to your attention today, rather than discussing with you banking matters or the state of our economy, because I, too, have become impressed with the importance of assigning proper priorities to our national goals. I had the privilege recently of reading the manuscript of a forthcoming book by General Lewis W. Walt, who retired last year from his post as Deputy Commandant of the Marine Corps. General Walt is not only a great soldier, but he is a most articulate and perceptive observer of the current scene.

His book bears an ominous title: "America Faces Defeat." It begins with words that everyone concerned with reordering priorities ought to think about. He says:

"Most living Americans have grown up in the most powerful nation on earth. Under the cover of that strength we have enjoyed an affluence hardly equalled in the history of any nation. This era ended in 1971. Today, we are a second-class power and we will have to accept that role for at least four years. Perhaps longer, possibly, forever."

He goes on to say:

"The individual citizen has not yet felt the impact of this basic change from strength to weakness, from leadership to compromise. Each of us will feel it as the world market for our goods and services shrinks; as we find ourselves increasingly alone within the community of nations; as we are forced to abandon the noble projects we have devised for the health, education and welfare of every living American."

"Instead, we shall have to learn once again the harsh lessons of weakness, of being trampled upon, and how it is to tighten our belts in privation and gird ourselves for nearly hopeless conflicts. We face, today, either defeat or years of national tragedy."

Those are strong words—too strong, I am sure, for those TV commentators who juggle figures to persuade the public that America is already spending far more than necessary on national defense. I will be surprised if General Walt is invited to discuss his book and its dire warning on the popular TV talk shows. I will be surprised if our leading newspapers and magazines give it any serious attention, but not because it would be disquieting to the American people to hear such warnings. The media spokesmen are constantly telling us that they should not be

blamed for conveying so much bad news to the public. They explain that if the news is bad, they have a sacred obligation to report it, and we should not conclude that they like it any more than we do. On that basis, of course, the media would not shrink from alerting the American public to the bad news that General Walt is bringing out in his forthcoming book.

My guess is that General Walt's warning will be largely ignored for the same reason that similar warnings voiced by other distinguished Americans have been ignored in recent years. The explanation lies in these words penned by David Broder of the *Washington Post*:

"Selectivity is the essence of all contemporary journalism. And selectivity implies criteria. Criteria depend on value judgments, which is a fancy word for opinions, preconceptions and prejudices."

It would be naive to suppose that the criteria for news selection employed by a TV commentator or a newspaper editor who believes that we are already spending far too much on defense would lead him to give prominent attention to the warning of General Walt.

That is why those of us who by chance are aware of such things must avail ourselves of opportunities to discuss them and to inform others. We must not permit our country to be immobilized and rendered defenseless by media manipulation.

Because of the credibility crisis, the average citizen is hard-pressed to know who and what is to be believed. I am prepared to admit that I am no expert on military matters. Perhaps experts such as General Walt who voice these disturbing warnings are wrong. But if we follow their advice and keep our defenses stronger than might really be necessary, what have we lost? Nothing more than a slight retardation in the expansion of what is the highest level of living the world has ever known. If, on the other hand, we follow the advice of those who say that a strong defense is not necessary and it develops that they are wrong, what will we lose? Our lives, our freedom, our country. I have no difficulty in choosing the side on which I would rather err.

I make no apology for appearing before you today to talk about matters that are not related to banking. We are Americans first and bankers second. When our country is in danger, we ask our sons to interrupt their studies and careers, to shoulder arms and give their lives if necessary to defend us. It behooves all of us who have passed that age and who have risen to positions of leadership in our communities and our profession to take whatever steps we can to insure that our country remains strong, that we not slip into war or—worse—into surrender from weakness.

The likelihood that the national news media will continue to ignore the warnings of experts in this field may create the impression that what I have said to you today is a minority view of doubtful validity. In my view, that would be a false impression, flowing from what Theodore H. White has described as the increasing concentration in fewer hands of the cultural pattern of the United States. Mr. White has said: "You can take a compass with a one-mile radius and put it down at the corner of 5th Avenue and 51st Street in Manhattan and you have control of 95 per cent of the entire opinion-and-influence making in the United States."

That explains, perhaps, why we get the monotonous sameness of opinion from our national news media, much of it very much at odds with the deeply held views of what I believe to be the great majority of American people. There is no acceptance of the idea that those encompassed by Mr. White's circle ought to reflect the views of the people. One of the most prominent TV commentators reacted to such a notion by saying:

"More responsive to the public! What are they talking about? . . . I'm not about to adjust the work I do according to the waves of popular feeling that may come over the country. No responsible person can do that."

That surely means that the voices of the people must more frequently be heard in contradiction of the waves of feeling that emanate from that tiny group of men in Manhattan that make up, according to Mr. White, 95 per cent of the opinion-and-influence making in the United States.

Let no man be deterred. It has been said that it is easier to find a score of men wise enough to discover the truth than to find one man intrepid enough, in the face of opposition, to stand up for it. Perhaps that one takes his counsel from Daniel De Foe, who said: "He that has truth on his side is a fool, as well as a coward, if he is afraid to own it because of other men's opinions."

YOUNG REPUBLICANS ENDORSE STRONG SPACE PROGRAM

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 20, 1972

Mr. TEAGUE of Texas. Mr. Speaker, the Young Republican National Committee on March 10, 1972, endorsed the space shuttle program. Because of the importance of this commitment of these young people to a major national effort I am inserting in the RECORD the press release from the Young Republican National Federation and a copy of their resolution endorsing the most important space activity of this decade—the development of a low cost transportation system to space—the space shuttle:

YOUNG REPUBLICANS ENDORSE STRONG SPACE PROGRAM

WASHINGTON.—The Young Republican National Committee, at its meeting March 10, 1972, endorsed the space shuttle program.

The resolution urges "Congress to supply adequate funding for the Space Shuttle Program to guarantee the growth of the United States in future space ventures and to insure continual lead in space exploration and scientific development."

"Because the United States is number one in space," the resolution says "the space program has been responsible for economic growth and employment of many communities throughout the United States, and has greatly aided in the progress of medical and scientific technology, thereby advancing world progress."

RESOLUTION

Whereas, the United States is number one in the space program; and,

Whereas, the space program has been responsible for the economic growth and employment of many communities throughout the United States; and,

Whereas, the space program has greatly aided in the progress of medical and scientific technology, thereby advancing world progress,

Therefore be it resolved that the YRNF does hereby endorse and support the space program and urge the Congress of the United States to supply adequate funding for the Space Shuttle Program, to guarantee the growth of the United States in future space ventures, and to insure our continual lead in space exploration and scientific development.

FOXES AND CHICKEN COOPS— PHASE 2½

HON. JAMES G. O'HARA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. O'HARA. Mr. Speaker, in earlier installments of this series on the Nixon administration's penchant for asking the foxes to protect the chickens, I have concentrated on the Labor Department's ingenious interpretation of its clear legislative mandate to promote and protect the interests of wage earners. But this inventiveness is not, in the Nixon era, limited to the Labor Department.

It is worthwhile, for example, to take a look at the personnel of the Price Commission and the Pay Board to understand why it seems that working people are making most of the sacrifices in the President's endless "war on inflation," while big business cheers from the sidelines and continues to enjoy whatever it is big business expects to enjoy during Republican administrations.

Mr. Duane Emme has written a recent article on where the wage freezers and price fixers in this administration come from. Like my earlier insertion on the backgrounds of Labor Department officials, this brief biographical summary is most illuminating.

The summary follows:

PEOPLE WITH CORPORATION TIES HOLD KEY POSITIONS IN PHASE II

(By Duane Emme)

WASHINGTON (PAI).—Labor has charged that President Nixon's Phase II program is shaped to favor corporations over workers and consumers—and revelations about the people running it continue to show a tilt in that direction.

Leo Perlis, director of AFL-CIO Community Services, told a luncheon meeting of the AFL-CIO Maritime Trades Department that all of the present Price Commission members have strong ties to corporate managements.

Meanwhile, an examination of the Pay Board shows that four of its ten top staff people are from business. Three are from government, one from education, one is a lawyer and one is a former Air Force officer. There are no key people on the staff with union backgrounds.

Here is a rundown on some of the corporate connections of Price Commission members:

Chairman C. Jackson Grayson, currently on leave as Dean of the School of Business Administration at Southern Methodist, has had an academic career that has been liberally mixed with work for corporate managements. He has helped train executives for Motorola, IBM and Sun Oil Co. He has been a consultant to Sun, Humble and Marathon Oil Companies and Standard Oil of Ohio.

William Scranton, former governor of Pennsylvania, was board chairman of Scranton-Lackawanna Co. and has served on the board of International Textbook Co., Scott Paper Co. and Fidelity Bank & Trust.

John W. Queenan was the managing partner of Haskins & Sells, an accounting firm with a number of business firm clients.

J. Wilson Newman is former board chairman and chief executive officer of Dun & Bradstreet, the noted financial directory

firm He has served on the boards of Chemical Bank Corp., General Foods and Consolidated Edison.

Robert F. Lanzillotti, has had a career as a professor of economics at several universities but he also has been a consultant to the Michigan Bankers' Association, U.S. Steel Corp., and the Swift Co.

William T. Coleman is a partner in a noted Philadelphia law firm with a long list of corporation clients.

The Price Commission has seven members but the seventh post is vacant. It was held by Mrs. Marina V. N. Whitman who resigned to join the President's Council of Economic Advisers. Ironically, she was the only one of Nixon's seven original appointments without apparent ties to business.

Biographical data furnished by the Commission on its members shows none of the business background of members except to touch upon it slightly in the sketches on Grayson, Queenan and Newman.

A look at the biographies of the top staff people in the Commission indicates that nearly all of them come from government careers. There are some with legal backgrounds but any corporate experience they may have had is not identified.

However, conspicuously missing from any key or even influential staff posts are people from union positions or consumer organizations. The sole representative of labor in any notable position is John Tomayko, Steelworkers' director of pensions and insurance, a member of the health services advisory committee to the Commission.

Labor's complaint on the tripartite members of the Pay Board, 15 in all, has been that at least three of the five so-called "public" members are not truly representative of the public; William Caples is a former Inland Steel vice-president and Arnold Weber and Neil Jacoby come from government posts in which they helped formulate Nixon economic policies.

In turning to the biographies of the Board's top staffers, four acknowledge a background with links to corporations:

Executive Director Robert P. Tiernan is a former tax attorney and labor counsel for Kaiser Aluminum and Chemical Corp.; John W. Ross, special assistant to Chairman George Boldt, comes from a labor relations post on the management side of the Wall Street Journal; R. T. McNamar, director of economic policy and case analysis, is a former tax attorney for Standard Oil of California; and Jack E. McGregor, general counsel, was president of a professional hockey team and Pittsburgh's "Business Man of the Year" in 1966.

A search through the Board's staff turned up only two people from labor careers, neither in key posts: Frank Burhardt of the Painters serves in the economic policy division, and Charles McDonald of the Communications Workers, is an attorney advisor in the legal section.

CLEAN WATERS

HON. DONALD M. FRASER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. FRASER. Mr. Speaker, next Monday and Tuesday the House will take up the Federal Water Pollution Control Act Amendments of 1972. The following editorial in the March 20 edition of the New York Times states succinctly the need to strengthen this bill:

AND CLEAN WATERS

The water-pollution control bill, which Senator Muskie sponsored and his colleagues long ago approved by a vote of 86 to 0, is even more far-reaching and hence in worse trouble. Between heavy fire from industry and moderate fire from the Administration the Senate bill may be shot down, or existing controls may be seriously weakened in the name of improvement.

Of the changes made by the House Public Works Committee, one of the sharpest setbacks is the drastic modification of the Senate's objective to decrease effluents into the nation's waters for the next thirteen years, by which time (at least this is the goal) they would be eliminated altogether. The House committee, while theoretically retaining the goal, would subject the plan to a study by the National Academy of Sciences, to be followed by a second vote in Congress—by which time a lot of foul water will have flowed under the bridge. Not content to weaken the Senate bill, the committee would also reduce the effectiveness of the EPA by shifting primary responsibility for the issuing of effluent permits to the states, a grave backward step.

Representatives Reuss of Wisconsin and Dingell of Michigan are striving to reverse these stultifying changes with a "clean-water package" of amendments. Unless the efforts of these two outstanding conservationists succeed, there may be no clean water legislation in this Congress at all—a disastrous setback to a cause that cannot afford any delay.

ALL-AMERICAN CITY

HON. ROBERT N. GIAIMO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. GIAIMO. Mr. Speaker, the town of North Branford, Conn., has recently been named an "All-America City," one of nine municipalities in the Nation so honored. I am extremely proud to have this town in my congressional district.

This town of nearly 11,000 people has been awarded the designation "All-America City" primarily because of the high level of citizen participation evidenced in a recent change in the town's governmental structure.

We all know, Mr. Speaker, how often apathy is found in municipal government, and how often personalities and heated arguments overshadow rational debate in the city and town elections of America.

North Branford, however, has proven that widespread civic action can take place in an atmosphere of debate, exchange, and positive action. The importance of North Branford's designation as an All-America City in recognition of this civic action is not that one side was "right" and another "wrong" during the referendum that changed the town's government, but that both were "right" in going about that change with widespread citizen involvement.

Mr. Speaker, the involvement of the people of North Branford in changing their form of government was such that more than a fifth of the population signed the petition forcing a referendum, and more than two thirds of the town's voters turned out to vote on the question.

Entry in the All-America Cities competition was made in behalf of North Branford by the North Branford League of Women Voters, and Mrs. Maurice Raymond, chairman of the Charter Revision Commission, presented the town's case at the National Municipal League Conference on Government in Atlanta.

More information and evidence of North Branford's achievement is contained in the following article and editorials which I would like to submit for RECORD:

[From the Hartford Courant, Mar. 1, 1972]

A STATE TOWN HONORED

For so small a state, Connecticut has won over the years a large share of national awards for community progress. And now another has been added. As announced the other day, North Branford has been named one of the nine All-America Cities for 1971 by the National Municipal League. Thus are hearty congratulations in order for the New Haven suburb of little more than 10,000 persons.

As many will recall, two other Connecticut communities won the same All-America Cities distinction last year. And the awards to Enfield and Bloomfield were equally deserved. If one still tends to think of these three communities as small towns, that makes their achievements all the more remarkable in competing with far larger municipalities across the country. And there is considerable variety in the reasons for the awards to Connecticut in the past two years.

North Branford, for instance, has been cited for "the efforts of its citizens to reform an obsolete local governmental structure." Local government is always a highly subjective matter, of course. And whether the council-manager system, now in effect in North Branford, is better than the traditional selectmen-town meeting form of government which it replaced is still debatable. What is especially noteworthy, however, is the fact that many responsible residents of the town believed so earnestly in the necessity for a change that they worked hard for it.

Thus, at the behest of an organization called Citizens for Council-manager Government, a special election was held last March on a new charter. And 67 per cent of the town's eligible voters turned out, favoring the council-manager system by a tally of 1,713 to 1,547. But perhaps the real winner was the democratic process. The large turnout for the election was attributed by the National Municipal League to a door-to-door campaign conducted by the citizen's group. The average turnout for special elections in Connecticut, the League has noted, is 24 per cent.

Last year, in Enfield's case, that town was cited for citizen participation in a variety of municipal functions. More specifically, the community was applauded for the imaginative \$5 million Thompsonville redevelopment program, school-building projects and commercial and industrial expansion, notably a proposed 500-acre industrial park. As for Bloomfield, it was commended for its forward-looking, educational planning. The town had launched a desegregation program which includes a \$5.5 million middle school for housing all fourth, fifth and sixth grade pupils, while a redistricting plan is providing an equal race mixture in the lower grades.

There are those of late, including the Wall Street Journal, who regard the All-America Cities awards as mere boosterism, signifying little. We don't agree. When citizens work tirelessly to improve their own communities, there is nothing so rewarding as a sincere pat on the back. And it's nice that North Branford has joined Enfield

and Bloomfield (and Hartford as well) in earning that nod.

NATIONAL HONOR FOR NORTH BRANFORD

We congratulate the Town of North Branford upon its selection as an All American City—one of only nine municipalities in the nation to be chosen for the high honor. The citizens of neighbor cities and towns can profit by the example and inspiration of the healthy civic interest that won the coveted award for the relatively small community of 10,654.

This marks the first time since the mid-1950s that an All-America Cities flag has flown in this region. The only other community in the area to win it was New Haven itself, honored as it underwent the pangs of pioneering in redevelopment. The accomplishments that brought the honor to New Haven are visible today—despite difficulties experienced by the city in common with other urban centers. It is most likely that in the years to come, North Branford will profit by its extraordinary achievement.

Politics being what it is, there may be some residents of North Branford who resent the honor, which grew out of controversy. It was bestowed for the display of civic interest that was channeled to action, with resultant change in the town's form of government. Whether one feels the change is for the better or worse, it seems plain enough that apathy was not countenanced by the citizens of North Branford. There should be satisfaction on the part of all over the fact that so many citizens of the town took part in the decision to establish a council-manager form of government.

No less than 250 to 400 residents instigated the campaign that eventually involved so many townspeople. An unprecedented turnout of 67 per cent of the voters approved the change by a close vote of 1,713 to 1,547. Such a turnout is highly commendable when the undramatic issue, important though it is, involves government structure and no personalities.

But all along the line, high interest was stimulated by a non-partisan drive in the face of Town Hall obstruction and lassitude. The selectmen had refused to implement the recommendation of a charter commission that the voters express themselves at the poll. But the campaign leaders wouldn't take delay for an answer.

A petition to force the referendum was circulated through citizen action. That petition was signed by 2,008 voters when only 690 signatures were required—an indication of the intensity of the effort. The determination held all the way, right down to the business of convincing a town meeting to overrule the selectmen on the referendum date so that more citizens would be likely to vote.

The voice of the people has been heard and heeded in North Branford through citizen initiative that has put the town in the national spotlight.

PRESIDENT NIXON MEETS RESPONSIBILITY ON BUSING

HON. HENRY BELLMON

OF OKLAHOMA

IN THE SENATE OF THE UNITED STATES

Tuesday, March 21, 1972

Mr. BELLMON. Mr. President, the message which President Nixon sent to Congress on busing deserves the full attention and fair consideration by every Member because it represents a sincere effort by this administration to come to grips with a controversy which has be-

come the most heated and highly emotional issue of the year.

The specific legislative proposals offered by the President requires serious study, which I am confident they will receive from the appropriate committees. There should be an adequate opportunity for debate, in order that all Members may be able to have all the necessary information before making a final decision on the President's proposals.

While the merits of the administration's plan are yet to be fully examined, however, the message alone has already accomplished one worthwhile purpose. It has served to inject a leveling influence into a situation where panic threatened to rule.

President Nixon's approach will not be pleasing to those who seek a simple, sudden, single-shot solution to the complex and longstanding problem of educational inequality. Neither will it please those who wish to return to the totally separate educational system of pre-1954. This is a problem which does not lend itself to immediate settlement and it is far too important to be swept back under the rug.

Sometimes the role of the Chief Executive is to serve as a balance wheel to keep the country from tearing itself apart. President Nixon has met that responsibility to a high degree in the recommendations he has made to the Congress.

Although busing is not a product of Congress, but of the courts, integration of the public schools is not a problem we can ignore.

Totally aside from the constitutional ramifications of the matter—about which competent and fair legal minds disagree—there is another issue that must be decided. The question is: Are black people here to stay and are white people ready to admit that they are?

If the answer is "Yes," then two courses of action are open. One is to pursue a course of action which has the end result of confining blacks to separate areas where they are maintained largely with huge sums of welfare payments. Around and through these communities will be needed an army of police to control crime and contain fear. Also needed will be another army of medical and social workers to contend with the problems of alcoholism, drug abuse, unemployment and illegitimacy. The net con-

tribution of such a community is negative.

Another choice is to follow Thomas Jefferson's admonition as expressed in the Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights . . ." This theme was further extended in the Constitution which says, in the 14th Amendment: "... nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Even one who has never considered himself to be a great social reformer cannot ignore the plain requirements of this language nor deny the direction our Nation's founders had in mind when this language was adopted.

The main point to keep in mind is simply this: Where, in what direction, is the country headed?

Until the 1954 Supreme Court decision in *Brown against Board of Education*, public school systems for more than 50 years had been allowed to operate under laws which permitted racially separate school systems, if those systems also were theoretically equal. In many States, the result of this doctrine was the enactment of laws which either required or officially sanctioned racially separate or dual school systems.

In such situations, regardless of how close a school was located to a home, children in the family were assigned to school on the basis of their race. In order to assure racial segregation, it was frequently necessary to bus both black and white children many miles each day.

In the *Brown* case, the court declared that "separate educational facilities are inherently unequal" and ordered that school desegregation be accomplished "with all deliberate speed."

My own State of Oklahoma, which had pioneered in breaking down color barriers at institutions of higher learning, moved rapidly and successfully to implement the court order and to end the dual school system. During the decade that followed, Oklahoma compiled an excellent record of progress in civil rights, moving away from separation in many areas—eating places, hotels and motels, public facilities, transportation and employment. The same thing has happened generally over the country.

These changes have come slowly and

sometimes painfully. The real question before Congress and the country now is, Shall we continue in this direction or do we begin to move back to where we were 18 years ago?

This country was established by those who believed that every citizen deserves an opportunity to fully develop whatever abilities and talents he has. It was believed that the Creator did not limit brains and talent to members of any race or class.

A nation that denies full participation in society and an opportunity for making a full contribution to any citizen because he is in the minority becomes a little weaker and a little less desirable place to live for everyone.

This, then, is the fundamental question that must be answered. I feel that the country must continue moving in the direction of bringing the races closer together by offering equal opportunity for all. This standard certainly should apply to education, because a person who is denied an education in his youth will find doors to opportunity closed to him all the rest of his life. A government which fails to provide an educational opportunity to its youth cannot through welfare or any other means make atone-ment later.

Over the years Congress has tried numerous times to enact a law dealing with the busing of students, but these attempts have been overturned as soon as they get into court. A prime example is the Civil Rights Act of 1964, which stated that:

No local educational agency shall be forced or required to bus or otherwise transport students in order to overcome racial imbalance.

During the most recent Senate action on this subject, a number of antibusing amendments were introduced to education appropriations legislation previously passed by the House. Most attention was focused on two of these—the Griffin amendment and the Scott-Mansfield amendment.

Mr. President, I ask unanimous consent that a comparison of these two amendments and a summary of the key provisions of each be printed at this point in the RECORD.

There being no objection, the comparison and summary were ordered to be printed in the RECORD, as follows:

COMPARISON OF GRIFFIN AND SCOTT-MANSFIELD AMENDMENTS

GRIFFIN

Section 901—No court of the United States shall have jurisdiction to make any decision, enter any judgment or issue any order the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

No comparable section.

SCOTT-MANSFIELD

No comparable section.

Section (a)—No funds appropriated for the purpose of carrying out any program subject to the provisions of the General Education Provisions Act, including this Act, may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written request of appropriate local school officials: Provided, however, that no court, and no officer, agent, or employee of the United States shall order the making of such a request: And provided further, that no funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process.

COMPARISON OF GRIFFIN AND SCOTT-MANSFIELD AMENDMENTS—Continued

GRIFFIN—continued

Section 902—No department, agency, officer, or employee of the United States, empowered to extend Federal financial assistance to any program or activity at any school by way of grant, loan, or otherwise, shall withhold or threaten to withhold any such Federal financial assistance in order to coerce or induce the implementation or continuation of any plan or program the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

Section 903—Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, color, religion, or national origin, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

Section 904—If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby.

SCOTT-MANSFIELD—continued

Section (b)—No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise, (1) urge, persuade, induce, or require any local education agency, or any private non-profit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee. No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially less than those offered at the school to which such student would otherwise be assigned under a non-discriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

Section (c)—Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from one local educational agency to another, or which requires the consolidation of two or more local educational agencies for the purpose of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall take effect upon the date of its enactment and shall expire at midnight on June 30, 1973.

No comparable section.

SUMMARY OF KEY PROVISIONS OF GRIFFIN AND SCOTT-MANSFIELD AMENDMENTS

GRIFFIN

Federal courts would be forbidden by Congress to issue school desegregation orders that would have the effect of requiring busing.

Federal officials would be forbidden to withhold or threaten to withhold federal funds in order to coerce or induce school districts to begin or continue any desegregation program that would have the effect of requiring busing.

Federal district court orders that require busing or consolidation of school districts to achieve racial balance would be stayed until all appeals have been exhausted.

SCOTT-MANSFIELD

Federal funds could not be used for busing to overcome racial imbalance, unless requested in writing by local school officials.

No court or federal official could order a school district to request federal funds for that purpose.

No federal funds could be used for busing when the time or distance or travel is so great as to risk the health of the children or significantly impinge on the educational process.

Federal officials would be barred from urging, persuading, inducing or requiring local school districts to spend state or local funds for busing unless constitutionally required.

Federal officials would be barred from pressuring a local school district to bus students to a school where educational opportunities are substantially less than those at a neighborhood school.

Federal district court orders that require busing from one school district to another or consolidation of school districts to achieve racial balance would be stayed until all appeals have been exhausted, or until June 30, 1973.

Mr. BELLMON. Mr. President, as the summary shows, the amendments contain many similar provisions.

The Scott-Mansfield amendment, which was approved by the Senate, answered most of the criticisms that have been raised by opponents of busing. By prohibiting the use of Federal funds for busing unless requested in writing by local school officials, the responsibility and authority was placed on local boards of education which are in the best position to make decisions. It prevents courts from ordering school districts to request Federal funds and guards against Federal agencies pressuring schools into using State or local funds for busing.

Under this amendment, no Federal funds may be used to transport students when the time or distance of travel may be harmful to their health or education. Also, Federal officials are barred from making a school district bus students to a school where educational opportunities are substantially less than those at their neighborhood school.

The basic difference between these two amendments, as I saw it, was that the Griffin amendment would completely remove busing as a tool to achieve school integration, while SCOTT-MANSFIELD would place heavy restraints on busing but not do away with it entirely.

Until a better solution is found, it is my feeling that Congress should not forbid the use of busing everywhere and under every circumstance. Therefore, I could not support the Griffin amendment. The Scott-Mansfield amendment offers a reasonable, workable approach to the

problem and for that reason I found this particular legislation more preferable.

Also to be considered is the fact that both these amendments would be subject to challenge in the courts and it was generally felt that SCOTT-MANSFIELD had a better chance of being upheld though admittedly even this is questionable.

The battle is far from over on the busing issue. There will be other votes, in both the House and the Senate. There will be much speechmaking, letterwriting, and arguments pro and con.

Nobody I know of likes or wants busing to achieve school integration, although busing has been practiced for years without being regarded as evil. As members of a farm family, my wife and I and our three girls all have had to ride the bus to public school.

However, I fully recognize the intense public concern that has been generated in Oklahoma as well as other parts of the country as a result of Federal court rulings on the question. I can well understand the frustration and anger that citizens may feel under the pressure of Federal authority.

In this statement, I have attempted to set forth my feelings on the subject to this point. On a final note, and perhaps as a guide to future consideration of this difficult problem, I ask unanimous consent to insert a portion of the 1971 report of the U.S. Commission on Civil Rights.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

BUSING AND THE NEIGHBORHOOD SCHOOL

Two emotionally charged issues have intruded into the public debate over school

desegregation and have tended to cloud understanding rather than clarify discussion. These are "busing" and the "neighborhood school." Those who have used them as arguments against desegregation ignore certain plain facts. One is that every day of every school year 18 million pupils—40 per cent of the Nation's public school children—are bused to and from school, and the buses log in the aggregate more than two billion miles each year. Another is that the trend of modern-day educational thought is away from the neighborhood school—a self-contained unit serving a relatively small student population—in favor of larger school units where economies of scale frequently make possible a broader curriculum, provision of new educational equipment, and special services not financially possible in schools which serve small numbers of students.

This happened in Oklahoma in the late 1940's and early 1950's when over 3,000 rural neighborhood schools were closed and the students were "bused" to schools in town.

To discuss desegregation in terms of "busing" and "neighborhood schools" is to remove the issue from the legal and educational context to which it belongs and transfer it to the arena of emotion and politics. Neither busing nor the organizational structure of school systems is an end unto itself. Rather, each is a means to the end of desegregated, quality education. As this Commission pointed out last April:

... the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important.

Mr. BELLMON. Mr. President, it is my firm conviction that this is something everyone can agree on—the President, Congress, the courts, educators, parents and children, black or white. I am hopeful that the people of this country, with the vast public and private resources we have at our disposal, can unite in a common goal to achieve the objective of the best possible education for every child in this Nation.

THE HIGH COST OF WATER POLLUTION CONTROLS

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. CRANE. Mr. Speaker, it has become commonplace for those concerned with problems in American society to refer to such problems as crises and to propose crash programs designed to stem the onrushing tide of disaster.

In most instances the solutions proposed by critics are neither as new nor as innovative as they suppose them to be. Critics of medical care, for example, call for national health insurance and Government-controlled medicine. Critics of the welfare system call for a guaranteed annual income system conducted from Washington. Those concerned with unemployment simply advocate that Government hire all of those without jobs.

The alleged solutions and responses are simply the same old answer of "let

the Government do it," which we have heard in response to so many other problems in the past. Government, we may recall, was meant to solve the farm problem, the problem of slum housing, the problem of inflation. Government, through the Office of Economic Opportunity, was going to assist those who were underprivileged in gaining the education and training they needed. In all of these cases, Government involvement has compounded rather than solved the problem.

Now the Congress is discussing the problem of water pollution. This problem exists, as does the farm problem, the problem of slums and all of the other problems which crusading reformers hope to solve by turning them over to Government bureaucrats.

The Senate has passed a bill and the House is considering a bill which will, its sponsors tell us, produce clean lakes and rivers all across America. The bill provides a clear-cut timetable: By June 30, 1974, municipal sewage pollution facilities will provide the equivalent of secondary treatment. By July 1, 1974, construction grants for treatment facilities will be made on a regional, or areawide basis, rather than on a city or town basis as in the past. By January 1, 1976, industrial sources of pollution will be required to have the best practicable control technology. By January 1, 1981, industry will cease water pollution discharges. By 1985, the discharge of all pollutants from all sources into navigable water will be eliminated.

In an important article in Barron's of January 31, 1972, Washington attorney Douglas Caddy notes that:

The Administration and industry representatives argue that the setting of these goals and deadlines is unrealistic and could lead to a new undermining of the confidence of the citizens in their government when expectations are not fulfilled.

Environmental Protection Agency Administrator William Ruckelshaus told a National Press Club luncheon that the provision for the elimination of all discharges into waterways by 1985 is not technically feasible.

The demands made upon American industry may not be only unreasonable, but also not possible. In his article, Mr. Caddy points out that:

Industry is . . . disturbed over the logistical problem of meeting the Phase I January 1, 1976, deadline, since EPA regulations defining the treatment facilities will not be available until 1973. The design and installation of sophisticated treating facilities for large or complex manufacturing plants involve a lead time of several years.

Beyond this, Mr. Caddy writes, is the fact that:

Phase II will see a separate and more stringent standard for treating facilities. Thus, after massive investment in Phase I facilities, industry may quickly find that they do not satisfy the act's requirements.

Another aspect of this legislation which is of growing concern is the fact that under this bill any citizen would have the right to initiate a civil suit against any party who is alleged to violate an effluent limitation or a Federal

or State abatement order, or against the EPA Administrator for failure to perform a nondiscretionary act. Businessmen, on the other hand, are unfairly denied the right to challenge the Administrator's actions in civil or criminal enforcement proceedings.

It is unusual that a Congress which is concerned with unemployment and the fact that American industry is becoming less and less competitive in the world market would place such new restrictions and limitations, as well as expenses, upon business. Economist Paul McCracken warned that the impact of this water legislation could "turn out to be proportionately heavy on industries and products that are important to our foreign trade" and could lead to enlarged structural unemployment, the most difficult to control because it is caused by disappearing markets.

Congress should carefully consider the implications of this legislation. All of us seek cleaner air, cleaner lakes and cleaner rivers. The question involved is not our goal, but whether particular legislative remedies bring us closer to such goals, or make their achievement less possible and less realistic, as well as more costly. I wish to share Mr. Caddy's article, "Effluent Society? Pending Water Pollution Controls Would Cost Industry Dear," with my colleagues, and insert it into the RECORD at this time.

[From Barrons, Jan. 31, 1972]

EFFLUENT SOCIETY? PENDING WATER POLLUTION CONTROLS WOULD COST INDUSTRY DEAR

(By Douglas Caddy)

Now that Congress has reconvened for its second session, it will pick up where it left off in processing major legislation. At the top of the list is the Federal Water Pollution Control Act Amendments of 1972, an impressive title for an array of concepts and proposals which may drastically affect the balance sheets of American corporations for at least the next decade.

In the opinion of most Congressional leaders, the new water bill could be the most important legislation enacted by the 92nd Congress. One thing is certain: If the proposed 1972 amendments to the Federal Water Pollution Control Act of 1965 are adopted without substantive modification on the floor of the House, their potential impact upon the economy and upon industry, agriculture, labor and government will be profound. The bi-partisan leaders of the House Public Works Committee, in announcing that the Committee had ordered its bill HR 11896 reported on the day before the first session of Congress ended, described it as "the most significant water improvement legislation ever reported to Congress," meaning the 1972 offspring amendments certainly outshine their parent act passed seven years ago.

SENATE VOTE

The Senate passed its own bill S. 2770 on November 3. The vote of 86-0 clearly reflected the absence of controversy and debate, although Senators James Buckley (R.-C., N.Y.) and Lloyd Bentsen (D., Texas), who serve on the Senate Public Works Committee, voiced concrete reservations about some of the bill's provisions. The Senate Public Works Committee in the past two years devoted 33 days to public hearings on the water legislation, heard 171 witnesses, received 470 statements for the record, compiled 6,400 pages of testimony and held 45 executive sessions. In the end, even the two slightly critical Senators, joining in praise for Senator Edmund

Muskie (D., Maine) for skillfully guiding the bill toward successful passage, voted "yea" and sent the measure to the House.

Rep. John Blatnik (D., Minn.), Chairman of the House Public Works Committee, almost immediately indicated he strongly opposed reopening the public hearings on the legislation which his committee, like its counterpart in the Senate, had been conducting for months. The Administration, supported by industry and state governments which felt the Senate bill weakened their pollution control powers, pressed for new hearings. Within a week after having voiced opposition to the hearings, Rep. Blatnik succumbed and scheduled final hearings for December 7-10.

The four days of hearings saw a parade of prominent witnesses—from the Republican governor of New York, Nelson Rockefeller, to the then Chairman of the Council of Economic Advisers, Paul McCracken—criticize the Senate and House bills as embracing the wrong goals and establishing dangerous regulatory powers. Nevertheless, on December 16 the House Committee voted to order its own bill, stronger in some aspects than the Senate version, sent to the House floor where it will be voted upon, perhaps as early as February. Rep. Robert Jones (D., Ala.), who is Acting Chairman while Rep. Blatnik recovers from a slight heart seizure, and Rep. William Harsha (R., Ohio), ranking minority member, declared the House bill goes "with the overwhelming bi-partisan support of the Committee's members."

COMPLEX PROVISIONS

One reason why little or no opposition is voiced against the legislation in Congress is that few members of Congress admit they understand the amendments' complex provisions and concepts. Indeed, it is worth noting that the Senate Public Works Committee on October 28 voted to report its bill but the actual text and committee report were not available until November 1, the day before the Senate was scheduled to vote. S. 2770 is 190 pages long and its length and complexity undoubtedly deterred many Senators from reading the bill in the 24 hours between the time the bill became available and the debate and vote. Thus, the Senate almost blindly relied upon the collective judgment of its Public Works Committee, which strongly recommended passage.

It was not until after Senate passage that the Administration and other critics awoke and began to clamor for a re-examination by the House Committee. S. 2770 and H.R. 11896 (as introduced on November 19—the text of the final bill will not be ready until February) must be read sentence by sentence to pierce their complex concepts and provisions. After doing so, one veteran Washington lawyer described the bills as "virtually a world's fair of legislative ingenuity and legal intricacy."

The controversy that has developed since Senate passage swirls around five concepts embraced by both bills:

First, the legislation sets a series of goals to be achieved and deadlines to be met in order for the country to obtain pollution-free water.

By June 30, 1974, municipal sewage pollution facilities will provide the equivalent of secondary treatment.

By July 1, 1974, construction grants for treatment facilities will be made on a regional, or area-wide basis, rather than on a city or town basis as in the past.

By January 1, 1976, industrial sources of pollution will be required to have the best practicable control technology.

By January 1, 1981, industry will cease water pollution discharges.

By 1985, the discharge of all pollutants from all sources into navigable water will be eliminated.

INTERIM GOAL

There is one general interim goal: to make lakes and streams clean enough by 1981 for swimming and for the propagation of fish, shellfish and wildlife.

The Administration and industry representatives argue that the setting of these goals and deadlines is unrealistic and could lead to a new undermining of the confidence of the citizens in their government when expectations are not fulfilled. Environmental Protection Agency Administrator William Ruckelshaus told a National Press Club luncheon on the same day that the House Committee ordered its bill reported that the provision for the elimination of all discharges into waterways by 1985 is not technically feasible.

Earlier, in committee testimony, the chairman of the Council on Environmental Quality, Russell Train, also criticized the goal. After noting that "since wastes will not simply disappear and must be disposed or recycled in some way," Train observed, "a no-discharge requirement presupposes that it is uniformly preferable to dispose of all waterborne waste on the soil or in the air rather than in the water, except where some type of re-use is possible. It is true that the land should be considered and quite possibly used to a much greater extent as an alternative to water for waste disposal, particularly for wastes that are composed of usable nutrients. However, I am aware of no evidence that land can be regarded as the best or even a viable solution for all or most waste disposal requirements. There are practical limits on land availability; there is potential for contamination of soil and ground waters by heavy metals and other materials."

"These and other questions need, and are receiving, further research and investigation. Moreover, surface water has a capacity to absorb a certain amount of wastes without harm. Although we certainly should not abuse or strain this capacity, neither should we ignore it, especially not without weighing the environmental hazards of alternative disposal choices." Train further noted that incremental costs of abatement increase greatly as higher levels of reductions are required. This is shown in the accompanying table.

EFFLUENT LIMITATION STANDARDS

The second major concept is abandonment of water quality standards developed under the 1965 Act and substitution of effluent limitation standards. Premised on a determination of the beneficial uses to be made of a given body of water, water quality standards include a description of the quality necessary for such uses, stated in physical, chemical and biological measures. A schedule of remedial actions to achieve and preserve such quality is included.

The proposed effluent limitation standards would require the progressive restriction on discharges into the water until the point is reached when no pollution effluent is discharged, i.e. 1981 for industry, and 1985 for all other sources.

EPA Administrator Ruckelshaus, in criticizing the substitution of effluent limitation standards for water quality ones, points out that this concept would forbid tertiary chemical treatment of sewage. Such a system is currently being installed at the Blue Plains sewage plant for the District of Columbia and, according to Ruckelshaus, the discharges from this treatment will be just short of drinkable quality. However, under the concept of effluent limitation the treated discharges could not be put into the Potomac River. According to Ruckelshaus, the alternative will necessitate the building of huge lagoons for sewage sludge settlement and the use of irrigation or some other system for the return of disinfected sewage effluent to

the land, EPA favors the new legislation building upon the existing foundation of water quality standards and employing effluent limitation only as a tool to achieve such standards.

BEST PRACTICABLE

The legislation's third major concept is to achieve the "no discharge" goal and effluent limitation standards through two phases. Phase I would require industry to apply the "best practicable control technology currently available" by January 1, 1976. Phase II would require industry to apply the "best available control technology" by January 1, 1981, if it is unable to eliminate completely the discharge of pollutants. A part of this concept is that all new point sources or discharge for 28 industrial groups (such as textile, steel, paper, chemical, etc.) will be required to use the "best available technology" and, if practicable, to meet a standard of performance which permits no discharge of pollution.

Industry representatives express concern over this concept because the legislation fails to define adequately what constitutes best "practicable" control technology, opening the possibility that the EPA or private parties in citizen's suits allowed under the act, might take the position that any control technology which is "possible" or "capable of being used" (the dictionary definition of practicable) is required. Since the two bills establish a precise standard of "secondary treatment" for publicly owned plants, they argue that precise standards should be applied to industry.

Industry is also disturbed over the logistical problem of meeting the Phase I January 1, 1976, deadline, since EPA regulations defining the treatment facilities will not be available until 1973. The design and installation of sophisticated treating facilities for large or complex manufacturing plants involve a lead time of several years. Moreover, thousands of plant owners will be competing at the same time for the equipment and construction labor. There is already about \$7 billion worth of waste treatment facilities for which federal financial assistance has been committed, construction of which is incomplete or not yet under contract. Still another problem is that Phase II will see a separate and more stringent standard for treating facilities. Thus, after massive investment in Phase I facilities, industry may quickly find that they do not satisfy the act's requirement.

NO SOLACE

The citizen's suits and administrative and judicial procedure set forth in the amendments comprise the fourth major concept. Since the act will permit citizen's suits to enforce compliance, industry may find no solace in the suggestion that EPA will be reasonable in applying the act and in resisting literal compliance.

The amendments would allow any citizen to initiate a civil suit against any party who is alleged to violate an effluent limitation or a federal or state abatement order, or against the EPA Administrator for failure to perform a non-discretionary act. If EPA or the state initiates a civil or criminal action on its own against the alleged violator, no court action may take place on the citizen's suit.

Any party who willfully or negligently violates its discharge permit or who violates several other specific provisions contained in the amendments shall be liable to a fine up to \$25,000 per day of violation and/or one year in jail. The penalty for the second conviction is \$50,000 per day and/or two years in jail.

The Senate bill requires a petition for review of EPA's promulgation of standards relating to new sources of toxic pollutants and any petition for review of the EPA Ad-

administrator's acceptance or rejection of a state's procedure for controlling new sources or issuing permits to be filed within 30 days in the U.S. Court of Appeals for the District of Columbia. A challenge to the Administrator's actions cannot be raised in civil or criminal enforcement proceedings.

FAIR SHAKE

Industry representatives argue these provisions substantially deprive interested parties, including the states, of access to judicial review. Since the U.S. Court of Appeals in the District of Columbia is characterized by some as a "liberal" court, they believe that they would receive a fairer shake if appeals could be filed in the U.S. Court of Appeals for the appropriate local circuit.

The House bill contains a provision which may prove to be a superior judicial procedure. It requires the President, through the Department of Justice, to study and make recommendations on the advisability of establishing an Environmental Court to resolve disputes over administration of pollution control measures.

The final concept embodied in the amendments is contract authorization. This would eliminate the budget-appropriation process of Congress and would give EPA direct authority to enter into contracts. At stake is the contracting authority to disburse vast sums of public sums. The House bill calls for a total outlay of \$27 billion over four years—\$7 billion more than the Senate bill. The Administration had originally recommended \$8 billion for the same time span.

Of the \$27 billion in the House bill, \$20 billion would be for sewage-treatment plants, including construction of collection systems. The Senate bill authorizes \$14 billion for plant construction. Both bills, in bypassing the normal budget-appropriation process, allow EPA to enter into long-term contracts with regional authorities. The federal share of construction costs under HR 11896 would range from 60% to 75%, depending on the state's contribution. This compares with 60%-70% in S. 2770 and 30%-55% in existing law. Both bills also authorize reimbursement to cities and states for their sewage plant construction work since 1965 (\$2.4 billion in S. 2770 and \$2.75 billion in HR 11896).

SIDESTEPS SAFEGUARDS

EPA Administrator Ruckelshaus, who would have the authority to disburse the billions of public funds, is opposed to contract authorization—as are a number of Senators. He says it "sidesteps all the safeguards and discipline provided by the budgetary-appropriation process."

The concept of contract authorization raises perhaps the most fundamental question concerning the potential impact of the water act amendments: will the economy be adversely affected?

Paul McCracken believes it may well be. In testimony before the House Committee last December he observed: "If new programs are taken in without seeing clearly the magnitude and character of future commitments, they may get out of line with our capability in the future to produce, thereby imposing severe strains and distortions on the economy. . . . We are already on an expenditure course such that federal outlays will tend to rise more rapidly than the increment of revenues that ongoing economic growth will yield with any given system of tax rates."

He warned that the impact of the water legislation could "turn out to be proportionately heavy on industries and products that are important to our foreign trade" and could lead to enlarged structural unemployment, the most difficult to control because it is caused primarily by disappearing markets.

In concluding, McCracken indicated his prepared remarks held three implications:

(1) "The commitment involved in H.R.

11896 is large. Required capital outlays for a sustained period would be equal to something like one-tenth of business fixed investment, and another like amount would be spent for operating costs.

(2) "... It would appear physically to be very difficult for this country under its system of construction as currently organized to produce the physical plants to achieve the level of effluent removal suggested by 1981 by either the Senate or House bills. Over the last two years the rate of growth of construction of waste disposal facilities has been 25% annually. This compares with a long-term rate of growth of approximately 6%. . . . Higher levels of activity in this sector could lead to more rapidly escalating inflationary pressure. . . ."

(3) The question of the economic feasibility of carrying the removal level to 100% "is not answered by whether even purer water is better but whether after achieving a reasonably high level of removal the large resources involved to achieve small further gains could contribute even more to our material welfare if they were to be used elsewhere. . . ."

IMPORTANT EFFECT

The economic common sense contained in McCracken's comments had an important effect. Committee members agreed to insert a new provision in their bill to require that within two years after enactment the National Academy of Sciences would complete and report to Congress a study of the social, economic and technological effects that would result from achieving the 1981 clean water goals. The requirement that industries must use the best available pollution control technology would not come into force until the Congress takes action to implement the findings of the National Academy of Sciences study. Practically, this might mean the 1981 requirement would not take effect unless Congress reimposed it.

Of course, even if provision requiring this study is retained in the bill on the floor of the House, it may be struck out when the House and Senate bills are sent to conference committee. Nevertheless, the McCracken testimony and the proposed study do serve to focus the attention of the entire House not on the question most frequently posed up to now: "Do we need this legislation if we are to clean up our waters?" but instead: "If we pass this legislation, will its environmental benefits be more than offset by the social, economic and technological costs required to implement it?"

If Congress enacts the water act amendments, President Nixon is not likely to exercise a veto. To do so, as Ruckelshaus says, would open him to accusations that he favors "dirty water." Accordingly, Ruckelshaus cautioned the House Committee members in enacting legislation: "We must be as careful as surgeons. We must take care not to throw the proverbial out with the bathwater."

TOTAL NATIONAL COSTS OF SUCCESSIVE LEVELS OF POLLUTANT REMOVAL

[Dollar amounts in billions]

Level of removal	Total cost	Cost per incremental percentage point of removal
85 to 90 percent.....	\$61.0	\$0.7
95 to 99 percent.....	119.0	6.0
100 percent.....	317.0	66.0

Source: Estimates of the Council on Environmental Quality and the Environmental Protection Agency. In effect the data are in terms of 1971 dollars, since no price inflation has been built into the data. Total costs include a 10-year program of capital expenditures and 20 to 25 years of operating costs for those facilities.

STATE MUTUAL LIFE ASSURANCE CO. OF AMERICA IN WORCESTER, MASS., LEADS THE WAY IN DEMONSTRATING THAT IT PAYS IN CASH, AS WELL AS IN HEALTH, TO QUIT SMOKING

HON. HAROLD D. DONOHUE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. DONOHUE. Mr. Speaker, as the Member of Congress representing the city of Worcester, Mass., in which the State Mutual Life Assurance Co. of America is located, I am proud of the most effective social development partnership for progress this great company has with all our community elements and I earnestly feel the company officials and employees deserve our universal congratulations and commendation for being the first in their field to provide incentives to consumers to quit smoking by offering them lower premiums on life and health insurance policies.

In this regard, a very enlightening article entitled "The High Cost of Smoking," by Walter S. Ross, in the March 1972 issue of the Reader's Digest, gave national editorial recognition to State Mutual's non-cigarette-smoker life insurance program in these extracted words, and I quote:

It started in 1964, when the Surgeon General's famous report disclosed that cigarette smokers had an overall death rate 68 percent higher than non-smokers. Subsequently, State Mutual Life Assurance Company of America began advertising, "The non-cigarette smoker is a better life-insurance risk. He's entitled to a better rate. So we've given it to him." State Mutual started selling life insurance in minimum amounts of \$10,000 at approximately a three-percent discount to all who could honestly sign the statement, "I do not now smoke cigarettes, nor have I smoked any cigarettes for at least the past 12 months." This would save a 31-year-old non-cigarette-smoking man \$15.60 a year on a \$30,000 policy. On larger policies, savings are higher.

Through 1971, State Mutual had sold more than \$1.2 billion of non-smoking insurance; today this insurance accounts for 35 percent of the company's new business. State Mutual finds that not only are the non-smoking policyholders better risks, but that they buy larger policies, and hold onto them more consistently. Perhaps it's easier for them to pay premiums because of the money they save on cigarettes. A 30-year-old man can buy \$10,000 policy with what he saves on a pack and a half of cigarettes per day. Today, 11 other companies have non-smokers' insurance.

Mr. Speaker, the very timely and interesting Reader's Digest article mentioned above emphasizes that cash incentives, to nonsmokers, are being extended in other business fields and they are part of a wholesomely developing national trend because most businesses are increasingly discovering that being concerned about and contributing to the improvement of the quality of life for the consumer is not only good citizenship but also good business in a better country. In its particular industry State Mutual Life Assurance Company of America has

shown the way; to others we simply say—go and do likewise—for your own, for your consumer's and for the Nation's best interest.

THE CONSEQUENCES OF SEGREGATION

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. EDWARDS of California. Mr. Speaker, we need, I think, to be constantly reminded of the evil consequences of segregation in our society. In the recent debates on integrating the suburbs and the use of busing to desegregate the schools there has been little, if any, mention of the terrible cost of continued segregation for the minority communities. Yet while the debate continues, the heavy toll of lost opportunities is exacted daily, often beneath the level of our notice and hidden from our consciences. The just completed report of the 20th century fund on "The Job Crisis for Black Youth" gives us the latest accounting of the damage inflicted upon blacks by continued segregation and denial of opportunity. This report deserves the attention of everyone in the Congress, and I hope that we will all read it to become more aware of the human casualties we are creating daily in our society by our continued refusal to end the racial segregation which permeates almost every segment of American life.

I commend to the immediate attention of all in this body the recent Washington Post editorial on this important study:

PROBLEMS OF BLACK YOUTH

"When hope dies, its heirs are desperation and despair," said James B. Conant a decade ago, warning of the "social dynamite" planted in our cities by the enforced idleness and empty expectations of "hundreds of thousands" of young people. The warning is cited in a study of "The Job Crisis for Black Youth" conducted by a special task force for the Twentieth Century Fund (Praeger, \$3.95). It found that the "hundreds of thousands" have multiplied, particularly among black ghetto youth and that the "social dynamite" which some years ago exploded at Watts and the subsequent ghetto riots, is now detonating in a steadily increasing barrage of crime. "As against a white adult unemployment rate of 4.6 per cent during the second quarter of 1971," the task force reports, "the over-all black teen-age unemployment rate was 34.9 per cent—or more than seven times greater; in the poverty areas it was 39.1 per cent. For black adults between the ages of 20 and 24 the unemployment rate was 19 per cent."

The causes are numerous and, in part, obvious: our general failure to generate sufficient jobs at adequate wages for all who want to work; racial discrimination; the near-breakdown of the inner-city schools which permit young people to drop out or graduate from high school without the minimum skills required for desirable jobs; the lack of an alternative to formal schooling of adolescents and the reluctance of employers to hire young blacks and train them for other than dead-end jobs. Another often-cited

cause is the flight of industry to the suburbs which leaves the inner-city resident with fewer opportunities for low-skill jobs at the bottom rung of the ladder to upward mobility. But that, says the study, is somewhat of an oversimplification. Because of the growth in services and government activities the number of jobs for unskilled workers has actually increased. The trouble is that many of these jobs are filled by commuters from the suburbs and, more important, that the number of black migrants and poorly educated inner-city youngsters is increasing even faster than the jobs. This trend continues to accelerate. And so does the prospect for crime. One cause, of course, is the despair of ghetto life and the contacts youth makes on the street. But a major and most disturbing factor, says the study, "may be the rising 'legitimacy' of crime, to the extent that blacks see it as an expression of civil disobedience"—as a form of protest.

The task force acknowledges that there are no easy solutions and that a multifaceted attack is needed. It would give priority to creating public-service jobs for all young people who can't find jobs in private industry, step up funding of antidiscrimination efforts and expand services, including child care, family planning and part-time employment for young black women who suffer the highest unemployment rates.

In the end, however, the nation, including its black leaders, must recognize that the problems of ghetto youth are essentially the problems of the ghetto. And these problems will become worse, no matter how much we spend or how well we mean, as long as we continue to house the black and the poor almost exclusively in the inner city. We can, perhaps, ameliorate ghetto conditions. But we cannot eliminate its inherent evil until we eliminate the ghetto itself.

RAIL PASSENGER CUSTOMERS NEGLECTED

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRASSO. Mr. Speaker, I deeply regret that the House, in its consideration of H.R. 11417, the National Railway Passenger Corporation Review Act, refused to accept the amendment to make the so-called inland route between New Haven, Conn., and Boston, Mass., a permanent component of the Amtrak system.

This amendment would have provided intercity rail transportation between New Haven, Wallingford, Meriden, Berlin, and Hartford in Connecticut, and Springfield, Worcester, Framingham, and Boston in Massachusetts. Such a provision would have done much to rekindle interest in rail transportation among the people of central Connecticut and central Massachusetts.

The inland route to Boston from New Haven includes over 1.2 million more people than the present Shore Line route. Although an important goal of Amtrak is creation of a balanced transportation system, Amtrak now runs 10 trains daily along the Shore Line route, but only one train daily from Springfield to Boston. Many more individuals would avail them-

selves of Amtrak trains if a more balanced route were inaugurated. Of the numerous people who drive from Hartford to Boston each year, a large number would gladly travel by train if the opportunity were offered.

Since the amendment considered would have required only a minimum of three trains daily along the inland route, it would not have jeopardized the existing Amtrak Shore Line route.

Instead of revitalizing intercity rail traffic, Amtrak continues to neglect potentially rich market areas by refusing to schedule rail service along those routes which would serve a large number of potential travelers. The Northeast is not alone in this problem. Other sections of the country also are without effective rail service. A large, untapped pool of potential rail passenger customers is being neglected by the current state of intercity rail transportation. Perhaps Amtrak will someday recognize this potential and take advantage of the promise it offers.

SICKLE CELL ANEMIA: RESEARCH, TREATMENT, AND DETECTION

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. RANGEL. Mr. Speaker, the House of Representatives is scheduled to consider legislation—landmark legislation—to fight the deadly sickle cell disease which afflicts black Americans. Sickle cell anemia, an inherited blood disease, strikes approximately one out of every 500 black children born in the United States. Most of its victims die a painful death before their 20th birthdays.

In December of 1971, the Senate passed S. 2676, a bill which would provide \$142 million over the next 3 years for Federal aid in the research, treatment, and detection of sickle cell anemia. The House Committee on Interstate and Foreign Commerce has reported out H.R. 13592, a bill less comprehensive than the Senate measure and providing \$105 million—\$37 million less than the Senate version—to combat this menace to our health. We in the House of Representatives would be remiss in authorizing anything less than our colleagues in the Senate to implement the National Sickle Cell Anemia Prevention Act. In addition, we have a moral obligation to guarantee that full appropriations swiftly follow enactment of this legislation.

I urge my colleagues to join in support of this desperately needed action. Promising research developments based on years of work have been revealed. Increased programs to educate possible carriers of the genetic sickle cell trait are reaching the black communities of America. We must not let these hopeful signs be crushed by the failure of Congress to authorize and fund the war on sickle cell disease.

EVALUATION OF COUNCIL ON ENVIRONMENTAL QUALITY—A COMMENTARY

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. DINGELL. Mr. Speaker, I insert into the CONGRESSIONAL RECORD an excellent historical commentary on the Council on Environmental Quality entitled "The Council on Environmental Quality: an Evaluation," by Mr. Richard N. L. Andrews, published in the January-February 1972 issue of the *Journal of Soil and Water Conservation*:

THE COUNCIL ON ENVIRONMENTAL QUALITY: AN EVALUATION

(By Richard N. L. Andrews)

(NOTE.—Richard N. L. Andrews is a Ph.D. candidate in environmental planning at the University of North Carolina, Chapel Hill.)

The Council on Environmental Quality has collected generous shares of both praise and blame for the course that federal environmental policy has taken in the past two years. However, it is not clear that how significant a role CEQ actually has played in this process. It is useful, therefore, to evaluate its powers, achievements, and problems during its first years of existence in order to put in accurate perspective both its potentials and its limitations.

CEQ was created by Congress as part of an unusual legislative package which not only established a "national policy on the environment" but included what were described as "action-forcing provisions" to assure implementation of that policy by federal agencies.¹ In CEQ, Congress created an ongoing institutional focal point for environmental policy-making and review.

The administration originally opposed creation of a statutory council, preferring instead to work through a cabinet-level coordinating committee. But Congress insisted, pointing out that while the cabinet committee filled a need for interdepartmental coordination, it had neither the time, the expertise, nor the independence of traditional departmental missions to provide consistent, expert advice to the president on environmental policies and trends.² CEQ was created therefore, as a three-member body of "exceptionally well-qualified men," appointed by the president and subject to Senate confirmation. To it was attached the staff of the Office of Environmental Quality, created by the Water Quality Improvement Act of 1970. (Public Law 91-224).

CEQ'S AUTHORITIES

By law CEQ is authorized to:

- Assist the president in preparing the annual environmental quality report,
- Gather information on environmental conditions and trends,
- "Review and appraise" federal activities affecting the environment.
- Develop and recommend environmental policies to the president,
- Conduct ecological and environmental investigations and research,
- Report annually to the president, and
- Conduct such other studies as the president may request.

Once congressional determination to create a statutory council became clear, President Nixon used the enactment of the law as a springboard for a sweeping set of environmental policy initiatives. He stressed environmental considerations strongly in his state of the union message, budget message,

a special environmental message to Congress in February 1970, and an executive order directing abatement of pollution emanating from federal facilities. One month later, in the executive order directing implementation of the procedures of the National Environmental Policy Act, he clearly went beyond the specific requirements of the law by authorizing CEQ to:

Conduct public hearings and conferences on environmental issues,

Coordinate (not merely review and appraise) federal activities affecting the environment,

Issue guidelines to federal agencies for compliance with NEPA, and

Issue such other instructions to the agencies and request such information from them as necessary to fulfill its responsibilities.

The significance of these added authorities hardly needs to be emphasized. First, they clearly underscore the commitment of the administration as well as Congress to environmental policy initiatives. Second, they give to CEQ powers otherwise held by few if any agencies in the executive office, except the Office of Management and Budget, to guide and influence the policies and actions of other federal agencies.

The administration's policy commitment to environmental quality has remained clear since that time as well in a stream of executive orders, legislative initiatives, and policy statements, including emphasis in each of the annual presidential messages to Congress. Thus whatever may be said of CEQ's actions, the actions have been taken in the context of a clear mandate from both Congress and the president to harmonize federal actions with environmental quality goals.

The limits of CEQ's powers must also be noted, however. CEQ is not an environmental czar, nor even a new national resources planning board. It has no authority to veto the actions of any other agency, nor even to require an agency to file the detailed statement of environmental impact required by Section 102(2) (C) of NEPA. It does have the power to review agency actions for environmental impact and to give advice both to the agency and to the president. But in any intractable conflict with another agency, CEQ's power is limited to its ability to persuade the president to take action. Its influence on the agencies can thus be explained only by its success in persuading the president to adopt its recommendations, or by its success in persuading agencies to adopt its recommendations voluntarily and thereby avoid later adverse consequences in the wider forums of congressional, judicial, and public opinion.

ACCOMPLISHMENTS TO DATE

Activities

Since its establishment, CEQ has been responsible for or contributed to a wide range of policy actions, including at least six executive orders: reversal of a ruling by the Internal Revenue Service denying tax-exempt status to nonprofit environmental law groups; discontinuation of construction on the Cross-Florida Barge Canal; formulation of the president's 1971 environmental legislative program; establishment, organization, and budgeting of the new Environmental Protection Agency; special studies leading to legislative initiatives by the president for control of ocean dumping and toxic substances; and regular advice, staff work, and recommendations to the president on such issues as eagle killings, oil spills, stream channelization, nuclear testing, the Alaskan oil pipeline proposal, international treaties, land use problems, and the upcoming United Nations Conference on the Human Environment.³

CEQ also has published two annual reports,⁴ the first a primer on environmental problems, the second a more sophisticated discussion of present trends and recent prog-

ress in resource management, the innercity environment, and the relationships of recent developments in law and economics to environmental problems.

The most far-reaching of CEQ's activities in terms of impact, however, has been its oversight and guidance of the implementation of NEPA's procedures by federal agencies. CEQ issued interim guidelines to the agencies in April 1970 and in July of that year published a list of the agencies that should be consulted about particular types of environmental impacts. In January 1971 it issued notice of its intention to revise the guidelines. The revised guidelines were issued three months later.

Despite these guidelines and CEQ's continuing review and assistance to the agencies in implementing them, a substantial lack of uniformity is still evident in the quality of the responses by many agencies. To suggest the reasons for this unevenness, it is useful to look briefly at the guidelines themselves.

Guidelines

Two basic policies are evident in both the interim and revised guidelines. First, although new procedures are required which may, in turn, affect choices between alternative projects and other types of actions, no new explicit rules of preference for making such choices are stated. The guidelines require that environmental impacts be considered in the decision-making process, and they imply clearly that some amount of bias in the direction of minimizing adverse environmental impacts must be introduced in the process of choice. But they do not show clearly how heavily such considerations are to be weighed against traditional agency objectives and budgetary constraints in making particular decisions or how much the administration is willing to sacrifice in attaining other goals (such as water resource development, highway construction, economic growth, and budget control) to achieve environmental goals.

The second policy is that much of the responsibility for implementation is left to the agencies themselves, minimizing the number of specific across-the-board requirements imposed by CEQ. There are obvious reasons for this policy, including the variation in situations and procedures among agencies which precludes governance of all by a single set of definitions and requirements, and also the newness and inexperience of CEQ which precludes sufficient understanding of the agencies' situations and modes of operation to prescribe operational rules for them. NEPA itself was written in general terms in recognition of the procedural differences that would be required to achieve its purposes in the varying contexts of different agencies. On the other hand, such a policy also made inevitable a chaotic transitional period of administrative adaptation.

Within these two policies, the guidelines serve to define particular points of ambiguity in the law, such as the "fullest extent possible" to which agencies are expected to comply with NEPA and the relationship between NEPA's impact statements and the water quality certification requirements of Public Law 91-224. The guidelines also suggest the range of topics that should be covered in the procedures and environmental statements prepared by the agencies.

In addition to clarifying and expanding somewhat this range of topics, the revised guidelines include one particularly significant policy change. They direct that no proposed administrative action significantly affecting the environment shall be taken until at least 90 days after a draft statement and 30 days after a final statement of environmental impact has been sent to CEQ and made public.

This requirement is, for better or worse, a significant departure in administrative de-

Footnotes at end of article.

cision-making. In effect, it establishes a public right to know of proposed administrative actions and their foreseeable consequences before they occur, increasing the possibility that opposition will develop from those individuals and groups who are adversely affected. As Haefele³ pointed out, the requirement raises the issue of who should decide among alternative uses of resources and how.

Critics of the provision contend that such access creates chaos, opening the administrative process to interminable questions of effects and to repeated "bites at the apple" to stop or stall projects by opponents. CEQ itself initially opposed inclusion of the provision. The interim guidelines did not contain it, and it was included in the revised guidelines only after direct threats by Congress to establish it by statute.⁷

Advocates of the provision, however, argue that administrative problems can be cured by better administration and sensitive rule-making, by adapting to the law and bringing the environmentally concerned public into the planning process when alternatives are being generated and considered rather than by trying to keep it out until the last possible moment; that both the spirit of NEPA and the letter of the executive order implementing it in fact require such public participation as early and as fully as possible; and that during the first year of implementation before the guidelines were revised several agencies demonstrated clearly their willingness to suppress environmentally adverse information until the action was practically a *fait accompli*.

In summary, some difficulties that agencies have experienced in implementing of omission in the interim guidelines, due CEQ's guidelines may be attributed to errors largely to the newness of CEQ in governmental decision-making processes. Presumably, revisions in the guidelines have ameliorated most of these problems.

A greater portion of the agency difficulties may be attributed to the transitional problems of attempting to develop and implement new environmental planning procedures, especially in response to judicial interpretations of the law. Most of these problems also should subside as the transition is weathered and agencies settle into the new procedures.

The remaining problems which exist in some agencies appear to be the result of administrative failure to respond effectively to the new mandate. One such failure is recalcitrance on the part of some agencies not traditionally concerned with environmental quality. Another is the failure of some agencies traditionally concerned with conservation to make the much smaller adjustments that are needed, incorporate environmental quality considerations and early public participation at defined points by clear rule-making, write environmental statements from the data they already have, and get on about their work. Environmental evaluation and citizen participation in planning need not stifle administrative decision-making, as the new chairman of the Atomic Energy Commission has so ably shown. These processes, however, do represent a challenge requiring better evaluation and better administration, and CEQ's guidelines have catalyzed this challenge.

CEQ'S PROBLEMS

In addition to the legal limitation on its power to compel action, CEQ has suffered from several administrative problems during its first two years. None of these appear insuperable, however.

The first such problem was prolonged birth pangs. Heavy responsibilities were thrust upon it immediately after its inception, but it was not fully funded until December 1970. It thus operated for nearly a year with an inadequate staff borrowed from other agencies. In addition, it operated during a period of three major reorganizations of the executive branch and was given only six months

before it was required to submit its first annual report. These circumstances forced initial concentration on short-range programs rather than on the more comprehensive mandate of the law.

A second and ongoing problem is the small size and unbalanced composition of CEQ's staff. It would be impossible for any staff of only 23 professionals to review the environmental activities of all federal agencies by any more rational criterion than political controversy, simply because of the magnitude of the job, let alone conduct long-range environmental analyses in addition. Of CEQ's 23 professionals, as of April 1971, only four had advanced degrees in the sciences and two in economics, compared with eight in law and four in public administration.⁸ The Council simply has not had the capabilities to carry out the full mandate of NEPA and has been forced instead to focus on the most politically controversial issues which are not necessarily the most environmentally important ones.

A third and related problem is the lack of any objective framework for systematically evaluating the environmental consequences of federal actions and weighing them against traditional costs and benefits. In the absence of such a framework, CEQ is limited to attempting to prevent the worst alternatives—actions which beyond any reasonable doubt would have seriously adverse environmental consequences—and to preventing the most politically controversial actions to protect the president's and, indeed, its own environmental reputation—actions which may or may not actually be the most threatening to environmental quality. The "squeakiest wheel" theory of administrative choice is hardly unique to CEQ, but it is a particularly important and difficult problem in a policy arena such as environmental quality where complex systems of solutions are needed, but quick, visible, and politically saleable solutions are demanded.

Finally, CEQ must operate aware of the fact that its future effectiveness is intimately related to the fate of the environmental issue in general, an issue presently in vogue but subject to all the uncertainties and instabilities of such issues. The reality that political support for environmental quality is primarily of the diffused sort characteristic of consumer issues makes it imperative that CEQ maintain public credibility and keep environmental quality alive as a political issue—to the extent that it can do so in its role as advisor to the president.

WHAT NEXT?

Despite its problems, CEQ has had considerable success and hopefully will continue to experience such as transitional problems are resolved and federal agencies become accustomed to planning and managing for environmental quality as a matter of course. CEQ's future depends no less than in the past on the ongoing commitment of the president to environmental quality goals since its power is limited to its ability to persuade him; but if present trends in environmental indicators are accurate, CEQ's area of policy responsibility will be an important subject for federal planning and action through the foreseeable future.

In addition to the proposals in the president's 1971 environmental legislative program, two particular problems appear likely to figure prominently in CEQ's activities in the near future. The first is land use, an issue on which several bills already are pending in Congress. This issue is a natural outgrowth both of concern over pollution and of national environmental policy since many if not most environmental problems result from the ecologically inappropriate use of land and its associated resources.

The second problem is project evaluation criteria, especially the problem of relating environmental quality criteria to traditional economic criteria for project justification.

Language in the conference report on CEQ's appropriation for fiscal year 1972 directed CEQ to consider economic effects in conjunction with environmental criteria⁹ and the decision by a federal court of appeals last summer construed NEPA as requiring a balance of economic and environmental factors in decision-making.¹⁰ Moreover, guidelines proposed by the Water Resources Council (but not yet officially adopted by the president) for the evaluation of water resource projects direct that such evaluation be carried out in a genuinely multiple-objective framework rather than under the present single criterion of natural economic efficiency.¹⁰ The issue is a most difficult one, but one with which both CEQ and the Office of Management and Budget (as well as the individual agencies) must grapple. Possibly, a joint effort by these agencies might produce new and better methods for project evaluation that would provide clear information, if not preference rules, for trading off economic and environmental considerations.

CEQ, however, is only a focal point for environmental policy-making and not the sole repository of such policy-making in the federal government. The actions or inactions of nearly all federal agencies affect environmental quality. Responsibility for it rests with the agencies, not with CEQ, and its maintenance and restoration are probably the most challenging task to confront agency administrators and planners in recent years. CEQ's creation was a necessary but by no means sufficient condition for achieving national environmental quality goals.

FOOTNOTES

¹ Council on Environmental Quality. 1970. *Environmental quality—1970*. Washington, D.C. 326 pp.

² Council on Environmental Quality. 1971. *Environmental quality—1971*. Washington, D.C. 360 pp.

³ Haefele, E. T. 1971. *Decision-making in common property resources*. J. Soil and Water Cons. 26 (4): 132-134.

⁴ U.S. Congress. 1970. *The National Environmental Policy Act of 1969, Public Law 91-190*. U.S. Code Annotated 42, Sec. 4321-4347. Washington, D.C.

⁵ U.S. Congress, House. 1971. *Agriculture—environment and consumer protection programs, fiscal year 1972*. H. Rpt. 92-376. Washington, D.C.

⁶ U.S. Congress, House, Committee on Merchant Marine and Fisheries. 1969. *Council on Environmental Quality*. H. Rpt. 91-378. Washington, D.C.

⁷ U.S. Congress, House, Committee on Merchant Marine and Fisheries. 1970. *Administration of the National Environmental Policy Act*. Hearings, serial no. 91-41, part I. Washington, D.C.

⁸ U.S. Congress, House, Committee on Merchant Marine and Fisheries. 1971. *Administration of the National Environmental Policy Act*. H. Rpt. 92-316. Washington, D.C. 107 pp.

⁹ U.S. Court of Appeals, District of Columbia Circuit. 1971. *Calvert Cliffs Coordinating Committee vs. Atomic Energy Commission*. No. 24,839 and No. 24,871, decided July 23, 1971. Washington, D.C. 40 pp.

¹⁰ Water Resources Council. 1970. *Report to the Water Resources Council by the Special Task Force*. Washington, D.C.

ANTI-COMMUNIST CHROME COMES TO AMERICA

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. RARICK. Mr. Speaker, the Burnside affair attempting to prevent entry

of Rhodesian chrome into the United States leaves many questions unanswered. For example, where did the protesters who call themselves the Committee of Blacks Against Oppression obtain their information that the Santos Vega was loaded with "illegal" Rhodesian chrome and under whose discipline and orders were the so-called demonstrators reacting?

Importation of chrome from anti-Communist Rhodesia is by express orders of a law passed by the U.S. Congress and signed by the President which states that whenever a strategic war material can be obtained from a free world country rather than a Communist country, it should be so done. Actions against the Rhodesian chrome shipment as illegal can only be regarded as an act of disobedience against the laws of the United States. Certainly no American would disobey his own Nation's laws in the interest of national defense to support an emotional United Nations theory of economic embargo.

These misinformed and misguided demonstrators do not understand the law and facts; for if they act with full knowledge, then they are being used as nothing more than an activist lobby in support of the Soviet Union, which is not only the Communist nation supplying the military hardware—the MIG airplanes and SAM missiles killing American fighting men in Vietnam—but is an all-white nation where all of its people, even its own citizens, are oppressed.

For a so-called Committee of Blacks Against Oppression to lobby on the banks of the Mississippi River in the United States for continuation of a Russian monopoly on chrome is a ridiculous exploitation by whoever is calling the signals.

SPORTS CORPS—COACHES

HON. F. BRADFORD MORSE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. MORSE. Mr. Speaker, one of the most effective, least costly, and remarkably successful Government programs designed to promote international friendship and understanding and to supply a critically needed manpower shortage in developing nations of the world has been the Sports Corps, a branch of the Peace Corps. Now slightly over one year old, the Sports Corps has placed 283 American coaches in some 25 countries around the world, many of whom will be serving as coaches for these nations at the upcoming Olympic games in Munich.

Sports Corps files are replete with enthusiastic praise for the work of these American coaches who have not only provided specialized athletic training, but have also instilled a deep sense of national pride and respect in the teams they coach. The success of the Sports Corps has not, however, been limited to the coaching of international Olympic teams; U.S. Sports Corps athletes receive the same warm and enthusiastic

welcome when they provide a heretofore lacking coach for a community high school or for a college in a developing nation.

Mr. Speaker, the enormous impact and importance of sports in forming and strengthening global understanding is, I feel, far too often overlooked, but it is an aspect of international relations that has, over the years, been highly successful. Recent history provides us with numerous instances when athletes from different countries have come together in mutual endeavors, while at the same time, political leaders from these countries have been unable to establish effective lines of communication among themselves.

Endeavors like the Sports Corps, the International Sports program operated by the Department of State, and the numerous private organizations contributing to international understanding through sports, deserve our fullest praise, support, and encouragement. They can and have very effectively opened many doors to better international understanding.

Two articles from last week's Washington News call attention to the achievements of the Sports Corps and its dedicated and talented director, Mr. Glenn C. Randall, a former world class athlete and National Olympic Coach, whose enthusiasm and talent have gone far in developing the Sports Corps. Glenn Randall's experiences in coaching Pakistan's Olympic Team in 1964, 1965 and his subsequent work in fostering international athletic programs have given the Sports Corps such a high reputation that requests from all over the world for volunteer coaches are flowing into Peace Corps Headquarters.

I am pleased to share the following two articles with my colleagues, which describe Mr. Randall's achievements, and those of Mr. Jay Jackson, a Sports Corps coach serving in Honduras, and I ask they be inserted in the RECORD at this point:

COACH MAKES GOOD IN A NEW PEACE CORPS

(By Tom Quinn)

The Peace Corps sometimes seems to sneak up on people. On Monday you're "considering" the possibility of leaving for awhile your comfortable suburban enclave and, boom—on Thursday you're halfway to Morocco or Malaysia or, in the case of Jay Jackson, Honduras.

For more than a year now, Jackson has been a one-man basketball program in that poor Central American republic. He returned to Washington, D.C., last week to pick up some textbooks for his nationwide coaches clinic in Honduras and to have a back operation.

This week he is back down there preparing the national all-star team for the upcoming Central American Championships.

Two things about Jackson struck me as unusual during a conversation just before he left for the South:

This 6-foot-4, lean, blond, blue-eyed man is not what people have come to regard as a "typical Peace Corps Volunteer."

He certainly is not a typical basketball coach.

In the first place, Jackson is 35 years old. He and his wife, Flora, not only volunteered themselves but also their children: Jay, 7, Jeff, 6 and Jim, 2. This is an example of a recent new emphasis under director Joe Blatchford for Volunteer families. When the

Jacksons decided to apply for the program over a year ago there were 30 participating families. Now there are 167.

But if Jackson had been the typical basketball coach of his high school team in Oak Harbor, Wash., he never might have considered the Peace Corps.

"But I wasn't. When I finished my fourth year as basketball coach at Oak Harbor I found I was disillusioned," Jackson said. "I always thought athletics were supposed to be for the kids, but I was beginning to realize that in the States it's not so much how you play the game but whether or not you win . . . or lose."

About that time, he ran into a friend who with his wife had taught in a Peace Corps program in Ethiopia. Jackson casually mentioned he wouldn't mind a change of scene and boom—three weeks later the Peace Corps called to ask if he'd like to go to Tunisia.

Within a few weeks, the Jacksons' destination changed from Tunisia to Morocco to Honduras but that's not surprising since the Peace Corps is a government bureaucracy whose organization is somewhat less together than its ideals.

"When we first got there, things were kind of slow. Flora got an intestinal problem and had to return to the states. I wasn't making much headway myself. In fact, I was overwhelmed with the lack of facilities, lack of discipline and general inertia in Honduras," Jackson said.

For example, in the Honduran capital, Tegucigalpa, three people handled the whole basketball program for four high schools and 16 primary schools. They would visit each school, one by one, twice a week for an hour each visit. On each occasion 60-80 children would vie for a chance to shoot the two or three basketballs allotted to each school.

"At that point we were discouraged but we decided to stick it out as long as possible," Jackson said.

Then a couple of things happened to change everything. Jackson traveled to the north coast of Honduras to give a clinic in San Pedro Sula. The people there were more enthusiastic than the Tegucigalpans and when the clinic was finished they flew his wife to San Pedro Sula for a special fiesta of thanks.

"Boy, I'll tell you, it was a real tear jerker," Jackson recalled. "And I went back to Tegucigalpa a new man. We felt accepted for the first time."

The Jacksons then moved out of their suburban, American-type home in the Honduran capital and set up housekeeping instead in a colonial building downtown.

"Now we were beginning to feel a part of the people," Jackson said.

Mrs. Jackson started a nutrition program in poor "barrios" of Tegucigalpa and she has had, so far, a 1,000 per cent success, dispensing vitamins and breakfasts to 120 youngsters. (She started out with 12.) The Jacksons are even trying to adopt one of the children who participates in the program.

Jay, meanwhile, has made headway, too. He is successfully conducting coaching and referee clinics and when he leaves next year he figures to have increased the number of qualified referees from six to 25 in the country and the number of coaches from three to 30.

The national basketball team is undergoing a weight program to strengthen the players for what Jackson calls a "pressing-running game—sort of a UCLA program without height." Indeed, there are only two players as tall as 6-4 on the team.

"It will take more than two years to build up the quality of basketball—I'd say the national team right now is about on the level of a good high school team—but at least we're laying the foundations," Jackson said.

In the meantime, the Jacksons have discovered they can get along fine without such

USA basics as the telephone, television, automobiles, frozen foods and hot water.

"The interesting thing is that in the past year and a half we have had more family life together than anytime in our 10 years of marriage," Jackson said. It used to be that everything was all work from seven in the morning to 10 or 11 at night back home.

"But this experience has really given us, as a family, a lot more sense of purpose and accomplishment. And we've made the kind of trans-cultural friendships that, well, were really hard to find back home.

"We had the feeling we weren't really of service to anyone in Oak Harbor but in Honduras it has been exactly the opposite. There we have come up against what I guess you could call 'real' rather than 'imaginary' problems.

"And it's been even more rewarding for the kids, who didn't seem to have our problems adjusting."

Listening to Jackson reminds me of what a radical friend told me recently: "The true revolutionary puts his flesh on the line with his ideals."

That does fit Jackson, altho he is probably more an "evolutionary" than a "revolutionary." His presence in Honduras is supposed to stabilize the country rather than revolutionize it.

Still, Jay Jackson is no phony. The world could use a lot more like him.

SPORTS CORPS BUILDS TEAMS—AND NATIONS (By Tom Quinn)

"Did you know that Pete Maravich got more to sign a professional basketball contract than the combined sports budgets of all the countries on the continent of Africa? Now that's a good example of the sports gap."

—Glenn Randall, director of Sports Corps
When Glenn Randall agreed to coach the track and field team of Pakistan in 1964-65 neither he nor anyone else foresaw that experience engendering Sports Corps, a new and of Peace Corps.

"The West Pakistanis are direct descendants of Alexander the Great—a people who run like the wind and are as big physically as doors," Randall said. "When president Ayub Khan requested a coach, the State Department contacted me thru Sports International and I leaped at the chance.

"Pakistan was not much in Asia, but after months of preparation when we finally went to the Asian Games, we (Pakistan) set 18 Asian records.

"Overnight Pakistan became the track and field power of all Asia—just because of one American coach."

Randall did not forget that remarkable lesson. Five years later, he helped found Sports Corps with the intention of sending qualified volunteers to Third World countries in order to:

Teach instructors as well as students of these countries.

Form scholastic leagues and sports clubs.
Coach national teams and athletes to represent their country.

Today, only 16 months after the founding of Sports Corps, 283 American coaches are serving in 25 countries trying to do what Randall accomplished in Pakistan. Fifteen countries will have American coaches at the Olympic Games in Munich, thanks to Sports Corps.

The idea, Randall says, is not to train athletes simply to break records. "This is the easy, logical, safe way for us to form and maintain very strong friendships in these countries," he said in his office in the Peace Corps building on a corner of Lafayette Park.

"The fact is," Randall continued, "we are one of the few arms of Peace Corps that is immediately accepted and appreciated by all

countries. And with no suspicion and none of that Big Brotherism.

"Man, even President Nixon has said that sports and cultural activities are the best ways of communication between us and the Communist block countries. It follows that sports is one of the most natural ways for 'developing countries' to get to know us and for us to get to know them."

Bill Toomey, Olympic decathlon champion and world record holder, was one of the first Americans to accept the Sports Corps challenge. Joe Blatchford, young Peace Corps director, and Randall decided to test out the idea of Sports Corps by sending Toomey to Venezuela, Ghana, Honduras, Ethiopia and Kenya. He returned full of enthusiasm.

"We watched a whole newly-formed nation—Kenya—being brought together by the strength of distance runner Kip Keino so we knew what a strong force sports could be in a country. Strong national figures or teams can instill incredible pride in the people," Randall said. "It may sound strange but we found if a people can believe in a team they often believe in themselves."

Just after Sports Corps formed in late 1970, Randall and Toomey toured 19 Asian countries and asked them if they would accept Sports Corps volunteers. "Everyone said yes unhesitatingly," Randall said, "tho many of these same countries were equivocal about the rest of the Peace Corps."

Toomey is now in charge of promotion and recruitment for Sports Corps, but others who embody the program include:

Mrs. Wilma Sutherland, M.A. in physical education and former Professor of PE at the University of California, is directing a teacher training program for the public schools of Valencia, Venezuela.

Bob Clotworthy, for 10 years the head swimming and diving coach at Princeton University and an Olympic gold medalist in diving is the national swimming coach in Venezuela.

Bill Sweek, a sparkplug on two recent UCLA NCAA champion basketball teams, is in Tunisia as national coach.

Bob Shul, Olympic 5,000 meter champion in Tokyo in 1964, coached the Malaysia track and field team to 18 gold medals in 24 events in recent South East Asian Peninsular Games. And Malaysia had never won more than six events in the games before Shul's arrival.

To this writer, the most important example of the effectiveness of Sports Corps is the case of Chile. When I passed thru Chile in 1966, students had shut down a university in Concepcion because of widespread belief that Peace Corps volunteers were CIA spies.

Whether or not this was true is not important. The Chilean government was about to ask the United States to remove the Peace Corps from Chile simply because they had enough problems without it.

Since then, Chile has voted in a Communist president and the United States has been cold in its diplomatic relations with the country.

Sports Corps, however, is going strong in Chile. It is accepted and lauded. The Chilean national swim and fencing coaches are both Sports Corps volunteers. Former University of Delaware coach Dan Peterson is not only the Chilean national basketball coach but five of his ex-players are distributed thruout the country in a highly organized network to develop Chilean basketball players.

Randall, however, is far from satisfied. Now he wants to:

Lead the United States into Red China. "We'd love to help the President set up an exchange program with Red China . . . we are the vehicle to do it and now is the time—in the spirit of the Olympic ideal."

Set up a National Academy of Sports in the

USA. "To promote American excellence in all sports. We're only good at five of 31 world sports."

Set up an international "Corps of Olympic Volunteers"—athletes and coaches from developed nations to spread thruout the Third World much as Sports Corps is doing, except on a multi-national scale.

Promote a "domestic Sports Corps" principally dedicated to speaking out FOR sports as an alternative to drug abuse among America's youth.

All of this seems like a lot to ask from a nation beset with the bills for problems at home and abroad—but it's not so much.

"The entire Peace Corps could be supported on what we spend for just two or three missiles," Randall said, "and, believe me, compared to the whole Peace Corps budget, Sports Corps is just taxi fare."

THE FAILURE OF PUBLIC HOUSING

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. EDWARDS of California. Mr. Speaker, the failure of Baber Village in Prince Georges' County, following fast upon the decision to demolish much of the Pruitt-Igoe high-rise housing project in St. Louis, is a stark commentary on the failure of public housing to provide the decent, safe, and sanitary housing for the Nation's poor that has been promised in the national housing programs of the past 3 decades. During hearings by the Civil Rights Oversight Subcommittee of the Committee on the Judiciary on the enforcement of the fair housing laws by the Federal Government, we explored with administration officials and public witnesses the reasons for this failure. The answers we received were consistent with those set forth in the excellent editorial in today's Washington Post: public housing is doomed to failure so long as it continues to perpetuate the patterns of racial and class segregation which characterize our Nation's housing patterns. The Washington Post is right, what is needed is not new housing placed in the same old segregated patterns, but new communities that provide housing opportunities for all.

The Washington Post editorial follows:
NEEDED: NOT HOUSING BUT COMMUNITIES

Great hopes were raised when only four years ago the nation's first Secretary of Housing and Urban Development, Dr. Robert C. Weaver, broke ground for Baber Village, an apartment house project for some 200 families of meager means, at the Mount Pleasant area, just north of Central Avenue in Prince Georges' County. Here was to be a new approach to housing the poor that would avoid the old mistakes of public housing—a program that had become thoroughly discredited.

"Decent, safe and sanitary" public housing to provide shelter for those who cannot afford the going market price for it, first became a national program in 1936 under the New Deal. It has been in trouble ever since. One of the troubles was (and is) that public housing projects concentrate large numbers

of poor and poorly educated people in isolated ghettos. At least 60 per cent of the families who live in these projects are black or Spanish speaking. Another trouble is that, due to restrictions imposed by Congress (which at one time, for instance, would not tolerate such "luxuries" as a balcony) many, if not most of these projects were poorly designed, devoid of beauty and amenity. The worst trouble is that the public housing projects tend to provide just housing without the social services, recreation and education that the poor need more urgently than people of means. Most projects are located on the other side of the railroad tracks, as it were, far removed from shops, schools and job opportunities and all the other "facilities" that facilitate climbing the ladder of what the sociologists call "upward mobility."

Thus, public housing became highly unpopular, so unpopular, in fact, that many communities actually passed laws to prohibit it. In some instances even the poor themselves refused to move into these projects, preferring instead to live in "indecent, unsafe and unsanitary" slums. If the slums were razed for urban renewal, freeways and other new construction, they would crowd into other parts of town and thus create new slums.

Though none of this had anything to do with the principle of public housing, the program barely crept along. We have yet to build the 810,000 public housing units Congress called for back in 1949. And roughly one half of the public housing constructed during the 1960's was built not for large families most in need of it, but for the elderly (who need housing, too, of course, but are more acceptable, somehow, than a lot of noisy children).

The Kennedy and Johnson administrations, as a result, launched a bewildering proliferation of new federal housing subsidy programs. Baber Village was built under one of the first of these, known to housing professionals as 221 (d) (3). The idea of this section of the 1961 Housing Act is that non-profit organizations, such as church groups or labor unions, should house the poor rather than the government. It is done with generous federal mortgage guarantees and sharply reduced interest and insurance charges. Some hailed this approach because it seems to strengthen free enterprise. Others called it "a gimmick." The fact is that many of these 221 (d) (3) projects have worked out extremely well. The Sursum Corda development at First and M Streets, NW, for instance, a cluster of townhouses and small apartments for some 200 families, sponsored by a group of Catholic church organizations, is a model of its kind. Others, like Baber Village, which is sponsored by the African Methodist Episcopal Church, merely confounded the old public housing mistakes. Baber Village is isolated, poorly designed and far removed from shops, schools and job opportunities. What is more, its sponsor invested less than \$5,000 in the project and lacked all knowledge and experience in housing construction and management.

Afflicted by shoddy construction, crime vandalism, Baber Village is in dire distress. More than a quarter of the houses are vacant and the African Methodist Episcopal Church is unable to raise the money for repairs and the mortgage payments. They have therefore decided to ask HUD to foreclose the mortgage and to turn the problem back to the U.S. government.

The heart of the problem is, of course that decent, safe and sanitary housing alone—public, private or in-between—is simply not enough. It must be supplemented by adequate community services, police protection, medical care, transportation, recreation and the rest. In short, it is time to stop

building housing for the poor and to start building communities that include everyone.

MASS TRANSIT, YES; MORE HIGHWAYS, NO

HON. FRANK J. BRASCO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. BRASCO. Mr. Speaker, the cities of our Nation are choking to death on the automobile. Cities like New York have desperate need of a massive transfusion of Federal funds for urban mass transit. Such action by Government is long overdue and desperately needed. We have already arrived at a point where it is practically impossible to move large numbers of city residents across metropolitan areas with regularity. If we do not act swiftly, our urban areas as we have come to know them will cease to exist. Urban mass transit subsidies by Government are utterly vital.

When I return home to my district in New York, I hear on all sides the legitimate and increasingly desperate request by constituents for this kind of action. Many urban Congressmen have petitioned the administration, seeking some understanding of the plight of our people. In response we receive mumbling and promises of vague future actions.

It is most difficult to impress upon this relatively isolated group of powerful men and women the urgency of our need.

Instead of some truly swift, comprehensive policy, we receive more highway plans, complete with destructive impact upon viable neighborhoods of our cities.

When will the people who decide our transportation priorities understand the last thing we want or need or will tolerate is more expressways? Why should more suburbanites be able to dash through the heart of our cities on their way to work or to their homes in suburbs? These roads tear apart good neighborhoods, displace honest, hard-working urbanites and in the end only further pollute the air. In effect, new superhighways create far more problems than they solve.

America has been on a roadbuilding orgy for at least the past 15 years, mainly through the Interstate Highway System, with 42,500 miles in total mileage. It has been and is being financed by the trust fund through user taxes virtually every American pays. Yet these funds are untouchable for other, more vital purposes, such as urban mass transit. A massive, shrewd, well-organized and well-financed highway lobby prevents any such use of these moneys. Attempts have been made to bring into being a similar trust fund for urban mass transit. I, for one, have joined in sponsorship of legislation to accomplish this goal. Yet the highway lobby, working closely with the administration, has held mass transit forces at bay, frustrating their legitimate efforts to cut the Gordian knot of traffic we are choking on.

Costs of the Interstate Highway System have been immense in terms of actual dollars expended, environmental damage sustained and priorities reversed. Immense amounts of ill will have been created, particularly among city groups who have become victims of these roads and their people removal programs. It is vital that the Secretary of Transportation tell us what his transportation blueprint for the future is going to look like. It is also vital that he inform the Nation of what the cost of future roadbuilding is going to be in terms of environmental damage.

These roads promote suburban flight away from cities. This, in turn, leads to urban blight. As a corollary of such programs, commerce is siphoned away from cities, taking jobs and tax money away from where they are needed most. This, of course, leads to downgraded municipal services and lack of people in urban areas.

The Interstate system has uprooted people in huge numbers; 58,000 in 1970 alone. By making it ever easier to use cars instead of rapid mass urban transit, we deplete our oil reserves. Over 38 percent of annual petroleum production in the United States goes into making gasoline, according to the National Petroleum Institute.

Autos on roads cause at least 39 percent of the Nation's appalling, growing air pollution, according to the Environmental Protection Agency, and as much as 80 percent of it in certain cities. Yet this year, highways will get \$5.2 billion from the Federal Government, while rapid transit systems will have to be satisfied with \$750 million. This is senseless, especially to a State and city like New York, which pays into the Federal Treasury far more than it receives in return from all Federal programs.

Nevertheless, the handwriting is on the wall. In every city across our Nation people are coming to realize they just do not have to endure this kind of outrage on their pocketbooks, nerves, and lives.

Groups are organizing all across the Nation, and highways are being stopped one by one by outraged, alert, aware groups through court actions. Virtually every month another victory is scored against these roads.

Last November, the courts stopped a federally funded freeway in San Francisco because the State had failed to make an adequate environmental study. One week later, highway foes got Interstate 90 in Seattle halted for the same reason. Victories in Washington against freeways threatening neighborhood integrity of the city have heartened freeway opponents across the entire United States.

My Borough of Brooklyn desperately needs attention to its transportation needs through a Federal mass transit commitment. The people I represent will not accept further puerile excuses and delays. In every way we can, we shall oppose the highway juggernaut until some measure of sanity is restored to the Nation's transportation priorities.

MY RESPONSIBILITY TO FREEDOM, BY CAROLYN RUSS

HON. JAMES H. (JIMMY) QUILLEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. QUILLEN. Mr. Speaker, each year the Veterans of Foreign Wars and its Ladies Auxiliary conducts a Voice of Democracy contest.

This year nearly 500,000 secondary school students participated, and the winning contestant from each State was brought to Washington for the final judging for five national scholarships which were awarded as the top prizes.

I am extremely proud that the winner in Tennessee is Miss Carolyn Russ from my hometown of Kingsport. A senior at Dobyns-Bennett High School, Miss Russ is the daughter of Mr. and Mrs. Erwin Russ. She hopes to pursue a teaching career or a career in the humanities.

Residents of Kingsport have great pride in Miss Russ and it is significant to note that in 1966 her brother, David, won the same contest and went on to become national winner.

Miss Russ has an impressive record at Dobyns-Bennett. She is a National Merit Scholar semifinalist, a nominee as Outstanding Teenager of America, has won tournament awards for debating, oratory and impromptu speaking, as well as receiving awards in Latin, math, and Tennessee history.

She is a member of the National Honor Society, the Beta Club, and the Science and Humanities Seminars.

The theme of this year's VFW contest was "My Responsibility to Freedom." I have all the confidence in the world in our young people, and after reading Miss Russ' essay, my confidence is greater than ever before.

It is a pleasure to make this prize-winning essay available for readers of the RECORD. At the same time, I wish to commend the Veterans of Foreign Wars for its continued interest in the Nation's young people.

The essay follows:

MY RESPONSIBILITY TO FREEDOM

(By Carolyn Russ)

Freedom is a bell! "A bell is no bell till you ring it." How shall I ring it? What is my responsibility to freedom?

I view freedom as a gift, and consider a responsibility to be something which must be fulfilled. When considering my responsibility to freedom I find that the idea of preserving freedom seems to be the central one, with a cluster of related ideas around it. Foremost among these related ideas are two which are basic to the preservation of freedom.

The first is most often mentioned—the negative idea expressed as "refraining from abusing freedom". It is easy to see that abuse destroys freedom since it causes quick destruction. This is apparent even in elementary school. When the teacher allows whispering, and someone forgets and shouts, the freedom to whisper is quickly withdrawn. Abuse of freedom and restrictions are directly proportional: as one gets larger the other gets larger. But, restrictions and freedom are inversely proportional: as restrictions get larger, freedom gets smaller.

I accept the idea of not abusing freedom as one way I can preserve it.

Less obvious is the second idea that using freedom is a way of preserving it because destruction of freedom by non-use is a more gradual destruction. This gradual destruction like Sandburg's Fog, "comes on little cat feet", and therefore is possibly more dangerous. Like man's vestigial appendix, freedom unused gradually shrinks into uselessness.

I accept the responsibility of using freedom in order to preserve it.

How may I, a high school student, use my freedom? Here my point of view is limited. I have only limited experience. I have a limited area of influence. I have limited opportunities. Maybe the word "student" is the key. Learning is my job—my way of using freedom.

What do I learn? Again I start with the obvious: learning the historical and structural facts of our American government, from the names of the signers of the Declaration of Independence to the name of my congressman, from the provisions of the Bill of Rights to those of the 26th amendment. I must not neglect these.

But I cannot stop here. I need to learn what other generations have thought—their political, theological and scientific philosophies—to evaluate them, and to use them as a base upon which to build my own thoughts. Through a variety of experiences I need to learn the essential art of understanding and getting along with people. Finally, I must learn how to speak and write about my ideas effectively, for, if I cannot express myself, I have failed in using my freedom.

All this learning is going to take a while—the rest of my life, I guess—so, at the same time I will have to start working—working. I hope, with wisdom enough to work until real solutions are found. To illustrate how I feel about this, let me talk about the problem of pollution—something everyone feels he must do something about. We have an abundance of people going out on Saturdays and picking up aluminum cans and chewing gum wrappers. This is all well and good—so far as it goes. But I can see the day coming when everyone will say, "Look, there's no trash along our highways. The pollution problem is solved." And meanwhile dirty air and impure water will be killing us all.

Solving a problem in this manner can be compared with trying to get rid of an iceberg. A team of people chopping on the iceberg with icepicks pretty soon might chop away the peak above the water. Good! Yet seven times as much of that iceberg remains underneath the water and, with the top part gone, it's hard to see the iceberg is there until your ship is wrecked upon it.

What is my responsibility to freedom? It is to preserve it by using it, not abusing it, by learning all I can so as to be able to share it, to be concerned, and to act responsibly to reach real solutions.

Freedom is a bell. A bell may be rung so that it produces discordant noise or harmonious music. May I ring the bell of freedom with a tone that is clear and strong and pure, for freedom is my responsibility.

THE LATE HON. JAMES W. TRIMBLE

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 15, 1972

MR. GIBBONS. Mr. Speaker, I would like to join those eulogizing our former colleague, James W. Trimble, for I feel a distinct, personal loss in his passing. When I was a young freshman in the Congress, he showed me many acts of

kindness. He was never too busy to take time to talk to me and to explain either the issues of the day or the intricate parliamentary procedures before the House. He was always available for advice and counsel and gave unstintingly of his time. I shall never forget his many deeds of kindness, and I am certain that many others benefited from his unselfish acts.

Jim Trimble was deeply dedicated to the public interest and served the 3d District of Arkansas well for 22 years. He was a member of the Public Works Committee, and later, the Rules Committee of the House of Representatives. He was greatly respected by his colleagues.

To his loved ones, I join many others in offering deep sympathy in this time of deep sorrow over his passing.

INEQUITIES IN THE RENT REGULATIONS UNDER PHASE II

HON. JOSEPH G. MINISH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. MINISH. Mr. Speaker, I wish to call to the attention of the membership the following letter addressed to the members of the New Jersey delegation by Mr. Martin Aranow, president, New Jersey Tenants Organization, in which he cogently summarizes the inequities in the rent regulations under phase II.

The "horror stories" may be downgraded by the Rent Advisory Board, but they are all too real for a great number of tenants not only in New Jersey but throughout the Nation.

I have expressed my deep concern to the Chairman of the Price Commission and I hope prompt and effective remedial action will be forthcoming. If not, the Banking and Currency Committee, on which it is my honor to serve, will conduct oversight hearings to insure that the administration of the stabilization program is in compliance with the intent of Congress.

Mr. Aranow's letter follows:

NEW JERSEY TENANTS ORGANIZATION,
March 14, 1972.

Congressman HUNT,
Congressman SANDMAN,
Congressman HOWARD,
Congressman THOMPSON,
Congressman FORSYTHE,
Congressman WIDNALL,
Congressman ROE,
Congressman HELSTOSKI,
Congressman FRELINGHUYSEN,
Congressman RODINO,
Congressman MINISH,
Congresswoman DWYER,
Congressman GALLAGHER,
Congressman DANIELS,
Congressman PATTEN.

DEAR REPRESENTATIVES: The federal wage price rent freeze is just not working.

Under the Phase 2 guidelines landlords are permitted to legally increase rents virtually without ceilings. We can document cases where landlords have raised rents 35% and 45%—all within the legal requirements of the Phase 2 regulations.

The regulations are confusing to landlords, tenants and to the Internal Revenue Service

In various locations throughout the state. The elderly and those on fixed incomes are not the only people being hurt. People who have leases are the most severely discriminated against. This happens to be predominantly middle class apartment dwellers.

We feel that we are literally "banging our heads against a stone wall" since our meeting with Rent Advisory Board Executive Director James Tanck only produced sympathy—and no changes. It is now up to you, our representatives, to try and do something. Perhaps public hearings or other types of pressure are in order to make the administration fully aware of what they are doing to innocent people. This fact is clear, it is morally wrong to limit a man's wages to 5.5% and allow his rents to skyrocket to as much as 45%.

We need your help now. When Mr. Tanck heard of the large rent increases occurring in New Jersey he said, "there are always a few horror stories."

Please feel free to contact us should you desire any further information. As of this point the outlook is bleak and it is our sincere hope that you can make the difference. We look forward to hearing from you in the near future.

Very truly yours,

MARTIN ARANOW,
President.

TRIBUTE TO JACK PROVO

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. FRENZEL. Mr. Speaker, on Friday, March 17, the Minneapolis Tribune carried an editorial praising the governmental career of Hennepin County Board Chairman Jack Provo. The occasion was Chairman Provo's retirement from the Hennepin County Board.

The editorial correctly identifies Provo's major achievement which was providing Hennepin County, a jurisdiction of over 1 million people, with updated capabilities which allow it to perform its duties effectively, efficiently, and economically.

From the day he began his service on the Hennepin County Board, Jack Provo relentlessly pursued excellence in county government. The present structure of Hennepin County government is testimony to Provo's effective work both in the legislature and among his fellow board members.

The people of Hennepin County will miss Chairman Jack Provo's leadership. The Tribune editorial follows:

PROVO'S COUNTY BOARD TENURE . . .

Hennepin County Board Chairman Jack Provo was not an original member of the Republican "Young Turks" who entered Hennepin County politics in the early 1960's to provide a decade of enlightened, progressive leadership in county and state government. But Provo fit this pattern when, after an intra-party fight for endorsement in 1964, he was elected a county commissioner on a platform that stressed expansion of the role of county government.

Since then, Provo has been an important part of the controlling board majority that accomplished just such an expansion under the chairmanship, earlier, of Robert Janes and, since 1969, of Provo himself. Buildings—the county Government Center and a new General Hospital—have been the most

obvious county board concern for a number of years. But the board's major contribution in the Janes-Provo years has been to reorganize and professionalize county government—equipping it with the capabilities necessary to shed its old custodial role, to accept new responsibilities and to concentrate on problem-solving during a period in which suburban population and political power expanded rapidly.

When Provo leaves the county board in September to become Hennepin County District Court administrator, most of the "Young Turks" will be gone. A few—Janes, Bill Frenzel—have moved to Washington; others—Wayne Popham, John Yngve—have, like Provo, chosen to retire from elective office. Replacing officials of such quality is not easy.

Both political parties have turned up some men of similar caliber—County Commissioner Thomas Olson and Minneapolis Alderman John Cairns, for example, and state legislators Arne Carlson, Thomas Berg and Robert Tennesen. Provo's resignation re-emphasizes the need and the responsibility of the parties, if they are to fulfill one of their major purposes, to offer more such candidates to the voters.

ANTIMILITARY COLLEGES

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. DUNCAN. Mr. Speaker, the cooperation between the military and our institutions of higher education has produced the finest military officers in the world. Recently, some of these institutions have let their political feelings be known by barring ROTC units from their campuses. It seems that educators who are supposed to instill the principles of understanding and objectivity in our youth are now violating those principles by letting their biases be known.

The editorial which I have inserted in the RECORD today makes an excellent case for eliminating Defense Department subsidies to schools which have lost their objectivity toward the military.

The editorial follows:

[From the Knoxville News-Sentinel, Feb. 26, 1972]

ANTIMILITARY COLLEGES

More than a dozen of the big colleges and universities have phased out military training courses, or are in the process.

Yet some of these schools, Harvard in particular, have continued to receive Federal funds for teaching officers of the armed forces.

Rep. F. Edward Hébert, chairman of the House Armed Services Committee, has threatened to push a special law to bar military officers from colleges which have dropped ROTC or forbidden military recruiters on campus.

There already is a law of this type, but some Pentagon officials have said they didn't think it applied across the board.

The Pentagon has said it will send servicemen "to the most appropriate graduate school" despite Hébert's threat.

In any event, Hébert is in the process of using his formidable influence to prevent any service from sending officers to institutions which have banned either ROTC or recruiters.

As he points out, there are thousands of

colleges and universities in this country, and the armed forces surely can find schools which offer suitable courses without subsidizing institutions which otherwise don't want any part of the military.

The decisions to drop ROTC or bar recruiters were forced, in most cases, by dissident student groups or faculty groups. Schools which buckled to those demands hardly are appropriate places to send young officers for advanced or specialized training at taxpayer expense.

THE "WRONGS" COMMON CAUSE IGNORES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. CRANE. Mr. Speaker, in considering the problems facing the Nation, too many individuals and organizations tend to see only those alleged "evils" which tend to reinforce their own preconceived notions.

Businessmen, accordingly, rarely see the faults of businessmen, and labor leaders rarely see the faults of unions. Similarly, we do not depend upon Government bureaucrats to tell us what is wrong with the administration of Government agencies.

It would be expected, however, that an organization which holds itself out as one which seeks the public interest, rather than the interest of a particular group, would concern itself with "wrongs" wherever they might be found.

Common Cause holds itself out as such an organization, yet it has proven very one-sided in its assessment of the Nation's problems.

Two "wrongs" which Common Cause has failed to identify, according to Arthur Krock, former Washington bureau chief of the New York Times, are:

1. The monopolistic power of organized labor, derived from a combination of (a) legal immunities from acts, including "municipal diplomacy," which would be illegal if performed by any other group, and (b) the gratitude of politicians to the unions for large contributions to their campaign expenses through "educational committees."

2. The callous exploitation of elementary-school children as pawns by vote-seeking politicians and fanatic reformers who are racists in reverse.

Common Cause has not seen fit to concern itself with the excesses of union power and the hypocrisy of enforced school busing. School busing, opposed by more than 75 percent of the American people, yet imposed upon them by bureaucrats and the courts, seems of no interest to an organization which alleges to be a "people's lobby."

Mr. Krock points out that an organization which calls itself an "ombudsman" for the people should speak out in behalf of the deepest felt needs of the people, such as for safe streets. He notes that the public has a right to expect such an organization providing a courageous voice against—

The prevalent crimes of violence, and a detailed denunciation of a legal system which tolerates the hideous crime of rape by allow-

ing the rapist almost to count on going unwhipped of justice.

Yet what are the reforms Common Cause urges—a "date certain" for withdrawal from Vietnam and opposition to the SST. Mr. Krock concludes that—

If the Nation is to be "rebuilt," I do not find a likely bidder for the contract in the application Mr. Gardner has entered for Common Cause.

I wish to share Mr. Krock's article, which appeared in the Washington Post of February 11, 1972, with my colleagues, and insert it into the RECORD at this time.

The article follows:

THE POWER OF ORGANIZED LABOR AND BUSING: CERTAIN "WRONGS" WHICH COMMON CAUSE IGNORES

(By Arthur Krock)

Common Cause, described by its founder, John Gardner, as a people's lobby working to "rebuild this nation . . . heal [it] and set it again on the path to greatness," has just issued over his signature an appeal for new members. In four single-spaced typewritten pages of lofty prose, Mr. Gardner has specified certain "wrongs" which Common Cause is "pushing" to correct. But conspicuously absent from these specifications, and hardly even to be inferred from a flood of generalizations, are two "wrongs" which bear down more heavily on the people than the safe and routine few Mr. Gardner has cited as reforms that Common Cause is "pushing."

These two wrongs are: (1) The monopolistic power of organized labor, derived from a combination of (a) legal immunities from acts, including "muscular diplomacy," which would be illegal if performed by any other group, and (b) the gratitude of politicians to the unions for large contributions to their campaign expenses through "educational committees." (2) The callous exploitation of elementary-school children as pawns by vote-seeking politicians, and fanatic reformers who are racists in reverse.

The "labor movement," to which Mr. Gardner referred as one of those reforms which "welled up out of the people" on the prompting of such citizens' organizations as Common Cause, began as a liberation of workers from the brutal exploitation of employers. But under legislative, judicial and executive favoritism it has developed into an economic and political tyranny which subjugates the general welfare to its own. In the process of so-called collective bargaining national unions are armed unilaterally with the weapon of strikes which, under the threat of paralyzing all communications and whole industries, confront management with the choice of agreeing to contracts that feed the fires of the inflation kindled by previous contracts, or shutting down their production.

When union strike funds are exhausted, the strikers can increase the burden on the taxpayers by going on welfare. If management attempts to continue production, the union involved in the dispute need only throw out a picket line to restrain the members of uninvolved unions from carrying out their contracts to remain on the job. And this despite the fact that the striking union may be shot through with corruption and its demands outrageous by any standard.

Yet no call for laws ending strikes which suspend national transportation is to be found in the statement of the aims of Common Cause.

If any protest against conditions that are "wrong" has "welled up" strongly from the people, it is against the crazy-quilt pattern of busing to effect a mathematical racial balance in the public schools. The doctrinaires, both the high-minded and the mush-headed do-gooders, plus the mercenary politicians and political judges who have

aligned with them, are uprooting small children from their neighborhoods, friends and families and sending them miles away by bus to areas from which other groups are being transported to the home neighborhood of the first.

Yet all the Supreme Court has ruled so far is that no state or sub-division may exclude a child from an elementary school by reason of his race. If a good school is nearby and the school of his choice is on the other side of town, the Supreme Court thus far has not said the state or sub-division must provide his transportation.

But a diligent search of Mr. Gardner's appeal for new Common Cause members discloses only this timid reference to a condition which is foremost among the things that are "wrong" with this country: "Your children attend crowded schools."

In a document with such a high degree of self-asserted righteousness of self-appointment as the ombudsman of the downtrodden, the reader also has a right to expect what he will not find—even a trace of—an extended arraignment, and a courageous one, of the prevalent crimes of violence, and a detailed denunciation of a legal system which tolerates the hideous crime of rape by allowing the rapist almost to count on going unwhipped of justice. Yet no violence committed by one person on another is more degrading to the victim than this desecration of a woman, or more capital a crime, justifying the extermination of the creatures who commit it and making detailed identification of the suspect the duty of the press.

Instead Mr. Gardner's statement reports that Common Cause is "pushing" reforms that require no courage to do this political voting rights, "a date certain" for total withdrawal from Vietnam, no SST, tax favoritism.

If the nation is to be "rebuilt," I do not find a likely bidder for the contract in the application Mr. Gardner has entered for Common Cause.

CELEBRATE CENTENNIAL

HON. GEORGE P. MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. MILLER of California. Mr. Speaker, the city of San Leandro, located in Alameda County on the eastern shore of San Francisco Bay is celebrating its centennial.

San Leandro is a viable community with lovely homes and supported by an industrial complex in no way detracts from the beauty of the city, and yet helps to support its activities.

The mayor of San Leandro is the Honorable Jack Maltester who has been honored by his fellow mayors by being elected president of the National Conference of Mayors and serving on several important government boards.

San Leandro is a good community in which to live and work, and I am proud to have it as a part of the congressional district I represent.

I want to join with San Leandrans in celebrating their 100th birthday and, as a part of these remarks, include a brief history of the city:

SAN LEANDRO

CENTENNIAL PHILOSOPHY

The Centennial has been planned as a community event. It includes activities reminiscent of past celebrations and also activi-

ties and events such as parades and dinners for San Leandrans and their guests.

The philosophy of the Centennial is to bring San Leandrans together to enjoy each other and their community, to work and play together and to remember San Leandro's history and its present as well. The Centennial Committee also hopes to provide the city with a permanent souvenir of the celebration. This is the Casa Peralta, which was purchased and donated to the city by Mr. and Mrs. Jack Brooks. Now housing the Centennial staff, it will be a public property to be used for cultural, youth, recreation and senior citizen activities, as well as for museum display purposes.

The Centennial is also planned as a way of rededicating ourselves to our city's future—to realize its prospects and opportunities and dedicate ourselves anew to working for them.

The first pioneers came thousands of years ago, in the great periodic migrations from Asia to the American continent. They were Indian people, hunters and gatherers. These shell-mound people lived on the San Leandro shoreline as early as 3000 years ago. They found a lush land, teeming with birds, game, and shellfish, and they stayed. They were probably the ancestors of the Costanoan people the Spaniards found when they explored the area 2800 years later.

The Spanish called them Costanos, "coast people." Anthropologists used the term Costanoan for the groups from the East Bay and the Peninsula (including San Francisco) down the coast to Big Sur and Soledad who spoke languages from the same language family.

There was no division into tribes, the people thought of themselves as belonging to villages—rancherías as the Spanish called them. To locate these rancherías we have to rely on the records of the Spanish explorers and missionaries, because almost all the rancherías had been destroyed or abandoned before the Americans came.

While the Spanish explorers in 1772 and 1776 never reported villages in Oakland or San Leandro, the Indians may still have had rancherías on the beach or in the redwoods.

There was an Indian village on San Lorenzo Creek, and there were another four or five to the south on each creek between San Lorenzo and Milpitas. They were of average size in 1772 and 1776, perhaps roughly 100 people in each. We do not know their names, although one ranchería near Mission San Jose was named Oroison.

The Indian way of life at San Leandro was in tune with nature. Before the white men came, the Indians lived in houses made of poles covered with tule matting. There was a temescal or sweathouse in every village, shaped like an inverted basket and covered with mud. The people took sweatbaths daily, which prevented several skin diseases. Women wore only short aprons, one in front and one in back, made of tule, deerskin, or fiber from bark. Their faces usually were tattooed in lines or rows of dots. Men and children went about naked, though in cold weather members of both sexes threw rabbit-skin blankets over their shoulders. The hair was left long but worn tied on the top of the head with twine, apparently by both men and women. Men often were bearded.

At the winter solstice a dance was held regularly at Mission San Jose by the Costanoans.

THE EXPLORERS, THE MISSIONS, AND THE RANCHOS

Two centuries ago, in the early morning of March 26, 1772, 16 men broke their camp on the San Lorenzo Creek and crossed into what is now San Leandro. They were the Fages-Crespi expedition, and they were the first white men to explore San Leandro. Captain Pedro Fages led the group, which included 12 soldiers, a muleteer, an Indian servant, and Father Juan Crespi, who per-

formed religious services and kept a diary. In the diary Crespi described San Leandro as part of a level plain with relatively few trees except in the creek. The land was good, though, and covered with wild grasses, herbs, and tules. The group did not apply a name to San Leandro or its creek.

Four years later, on March 31, 1776, another expedition, the Anza expedition, camped on San Lorenzo Creek and the next day explored San Leandro. Diaries were kept by both Captain Juan Anza and Father Pedro Font. Father Font described San Leandro Creek on April 1 as "an arroyo with little water but with a deep bed grown with cottonwoods, live oaks, laurels and other trees . . ." They saw four bears and reported them plentiful here, ". . . for we saw several Indians badly scarred by bites and scratches of these animals." Evidently these Indians were seen in San Leandro.

With the founding of Mission San Jose de Guadalupe on June 11, 1797, the padres really began to change the way of life at San Leandro. Almost all the local Indians were brought to the mission and converted to Christianity during the next 15 to 20 years. The majority lived in Indian huts around the mission (Mission San Jose). Their labor built the mission, plowed the fields, and tended the stock. This was a large job, because the mission lands extended north to San Leandro Creek.

Many of the Indians became vaqueros, and San Leandro became a place for rounding up the northern stock, El Rodeo de San Leandro. The name, after St. Leander (a Spanish bishop), may have occurred before Jose Joaquin Estudillo—the city's founder—arrived: or Estudillo may have been the first to use it, if St. Leander was his patron saint as Freeman once reported.

In 1834 the missions were secularized. That meant that the administration of the mission buildings, lands, and herds was taken over by the Mexican government. Some of the land and stock was given to the faithful Indians tending them in San Leandro and elsewhere. Some of it was dispersed in the form of land grants. In 1836 Estudillo brought 300 white heifers to San Leandro from Rancho Pinole and established his home here on the bank of San Leandro Creek, about where Donovan Drive and Brookside Street now meet. On January 8 of the following year Estudillo filed for a grant of the Rodeo de San Leandro, between the Arroyos of San Leandro Creek and San Lorenzo Creek. After waiting for five years, Don Joaquin realized his application must have been lost, and he filed a new one. Four months later he received the grant, October 16, 1842. It included all the land between the two creeks from the hills to the Bay, except the lands occupied and cultivated by Indians. He called it Rancho San Leandro.

When the Americans came, they bought or squatted on what land the Indians had held on to. As the ranchos broke up, the Indians gradually intermarried with the Mexican population and became indistinguishable from it, especially since most had Spanish names given them by the padres or rancheiros. No treaties or settlements ever were made. The descendants of the Costanoans reconstructed themselves as the Ohlone Indian Tribe in 1971.

Life on the Estudillo Rancho was gracious, pastoral, and unhurried. Don Joaquin made a good living from his rancho, and through the trade of hides and tallow with New England merchant ships was able to buy fine silks for his wife and daughters, casks of brandy for entertaining, and may other things that could not be produced here easily. He had more than 100 Indian vaqueros and servants at one time. There was time for roundups; dances; meriendas (picnics); bullfights; and visits to relatives in the East Bay, San Francisco, and Monterey. Life was good.

Estudillo had married Juana Martinez (March 30, 1805 to November 8-14, 1879) on February 6, 1823, and they had 10 children by 1842 when Don Joaquin applied again for his grant. The children were: Concepcion (born 1825, wife of John B. Ward), Ramon (born 1827), Gertrudis (born 1829), Antonio (born 1830), Maria de Jesus (1831-1909, wife of William H. Davis), Vicente (1833-1893), Luis (born 1836), Magdalena (born circa 1842, wife of John Nugent), Dolores (born circa 1841, wife of Charles H. Cushing), and Jesus Maria ("Chumalia") Estudillo (born circa 1844, died 1910). Their stories are told in Shaffer's history and San Leandro Recollections, Centennial publications.

The Estudillos gave the Plaza and land for the County Courthouse (Clarke and W. Estudillo), for St. Leander's Church, and for several parks on San Leandro Boulevard (formerly the ball park and the tennis courts). Davis and Ward laid out the town of San Leandro on February 27, 1855, St. Leander's Day. They drove around the county in a buggy to get votes to move the county seat to San Leandro, and they built the Estudillo House. Ward built the first dam across San Leandro Creek to provide water, and it was he who opened up Washington Avenue in 1860 as a street to San Lorenzo.

These are just a few of their activities that shaped the town. Magdalena, Maud, Sybil, and Elsie avenues were named after the Nugent family. Chumalia Estudillo (who usually went by J. M. Estudillo) was a town trustee and quite active in civic events.

Ygnacio Peralta owned all San Leandro north of the Creek (and Oakland to Church Street and to 69th Avenue). This was his part of the Rancho San Antonio grant (from San Leandro to El Cerrito) that had been given to his father, Luis Maria Peralta, in 1820. It was in 1842 that Don Luis rode up on the East Bay hills with his sons and divided the grant among them.

We do not know the exact year Ygnacio moved here, but he had built an adobe by 1842 on San Leandro Creek (near the end of 105th Avenue in Oakland). He was across the creek from the Estudillos in their first adobe. Ygnacio (April 3, 1791-May 9, 1874) and his wife, Rafaela (Sanchez) Peralta (born 1800), had 12 children: Marcia del Carmen (1819-1874), Jose Francisco (born 1820), Miguel Antonio (born 1825), Joaquin (1827-1869), Maria Ludovina Columba (1828-1917), Luis Maria (born 1831), Jose de Jesus (born 1833), Juan Bautista (born 1835), Maria Antonia (1836-1926), Gabriel or Barilella (born 1839), Rafael (born 1840), and one, possibly another Maria, who died young. Records of marriages of all but Joaquin, Luis Maria, Rafael, and the young Maria are in existence.

THE COMING OF THE AMERICANS—IMMIGRANTS 1850-1871

San Leandro had only a handful of American settlers before 1850. One of the earliest was William Heath Davis (1822-1909), who came to California as a cabin boy on one of his father's ships from Hawaii as early as 1831. By 1838 he had advanced considerably to supercargo, then became an owner of Yankee trading ships. He met his future wife in 1842. He soon ran a merchandise store in San Francisco. He finally married Maria de Jesus Estudillo in 1847 and came to San Leandro, where he lived with the Estudillos for several years.

The second American son-in-law, John B. Ward, came to California during the Gold Rush in 1849 (though he had visited the coast as a cabin boy in 1840). He came to this area after a try at the mines, and married Concepcion Estudillo in November, 1851. In late 1849 Thomas W. Mulford, Moses Wicks, A. R. Biggs, E. Minor Smith, and W. C. Smith, all of whom had come during the Gold Rush, crossed the Bay in a whaleboat and settled as duck hunters and squatters

in the area of the present Mulford Gardens. Mulford and Wicks remained and played major roles in the development of the large-scale farming, shipping, and oyster industries of San Leandro.

OBSERVATIONS ABOUT OUR LEGAL SYSTEM

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HALPERN. Mr. Speaker, last December, a most significant message was delivered by a public-spirited, dedicated American citizen. The contents of this address touched me so deeply that I feel, in view of the timeliness of this message, that it should be brought to the attention of the Members of this body.

I refer to the address of Harry Goldsmith before the annual president's dinner of the Grand Jurors Association of Bronx County, N.Y. Mr. Goldsmith, the outgoing president of the association, delivered a most inspiring and forceful address in which he made certain observations about our legal system—observations which, if translated into action, would contribute immeasurably to the fight against the rising crime rate and the scourge of narcotics abuse.

I was particularly pleased to note that Mr. Goldsmith's colleagues in the Grand Jurors Association and his many friends and admirers have honored this remarkable man many times before. He is, to be sure, a very exceptional human being. Harry came to the United States in 1937, leaving the horrors of Nazi Germany behind him, and from that time on he has been an active participant in numerous civic and community projects. This man is indefatigable, his vision laudable, and his perseverance unmatched. As he has said many times "It has always been very easy for me to give—but very embarrassing for me to receive." This is the creed by which Harry Goldsmith lives and his friends and community are all the better for it.

I know personally of Harry Goldsmith's contributions to worthwhile causes through his unrelenting efforts to find solutions to the problems of drug addiction, particularly as it affects adolescents. Mr. Goldsmith served for several years as a member of the Lay Board of Riverside Hospital, the only facility in the world at the time dedicated solely to the treatment of preadult addicts. This institution was established by the city of New York nearly 20 years ago under a State-enacted adolescent civil commitment law which I was privileged to sponsor. For some while I served as chairman of that board and I witnessed first-hand the trials, the frustrations, the agonies of the addiction problem which began to plague us during the 1950's. Mr. Goldsmith, despite the discouragements that would have dissuaded a lesser man, became even more determined, even more relentless in his efforts to find the answers, and has been devoting every spare moment toward that end.

That is why I was so pleased with the recognition accorded Harry Goldsmith by the Bronx Grand Jurors. That is why his words—so sincere, so genuine—mean so much.

Mr. Goldsmith's speech on the evening of December 2 was guided by his usual inspiration and ability to see things as they really are. I would, at this time, like to share with my colleagues his speech of December 2 so that they might learn of this warm and dedicated community leader and reflect on his thoughts.

The speech follows:

THE GRAND JURORS ASSOCIATION, OF BRONX COUNTY, ANNUAL PRESIDENT'S DINNER, DEC. 2, 1971

Reverend Clergy, Distinguished Guests and Friends: Mr. Chairman, Judge Dollinger, thank you very much for your kind words.

It is with sincerest gratitude that I accept this gift from the Grand Jurors Association. It has always been very easy for me to give—but very embarrassing for me to receive. It is almost painful for me to answer when I am being praised and I am the recipient of a wonderful award presented on behalf of an elite group of citizens—by a friend, one of the outstanding jurists in our community.

My family and I accept this great token of recognition with the deepest humility and appreciation of the spirit in which it was presented.

In 1937 this country opened its door and gave me the opportunity to become a citizen, raise a wonderful family and blessed me with many loyal friends. During the first few years in this country I learned what the words poverty and desperation meant, but with hard work and some luck, I overcame these obstacles. Having fled from the injustices, prejudices and ravages of a Nazi Fascist ideology, I dedicated myself to the struggle for safeguarding our sacred democratic principles, which have provided equality and justice for all our citizens.

I have chosen to be active in the fight against drug abuse and have devoted my time to the Grand Jury system, which is pledged to the promotion of justice, and is one of the finest instruments in protecting the innocent. It encourages civic participation by the people. It enables the community to temper justice with mercy.

Those of you who have served on the Grand Jury know the feeling of disappointment and hopelessness, after spending weeks listening to case after case. However, we must not be discouraged, but continue to use the Grand Jury system to see justice done, because the delay of justice is injustice.

We are fortunate in Bronx County to have a human dynamo, a vigorous, energetic and forceful District Attorney, Burt Roberts, who is capably assisted by a brilliant, loyal and devoted staff.

We have in our county, under the outstanding command of Chief Anger and Inspector Courtenay, the finest and most efficient police force in all of the boroughs. We also have compassionate judges who are respected for their fairness, impartiality, and who sit for many a long day in judgment under extremely trying circumstances.

If we, ladies and gentlemen, analyze the phrase—"life, liberty and the pursuit of happiness," we know, based upon our daily experience with the Grand Jury—that life is cheap in the streets of Bronx County; that liberty does not exist for many of our citizens, locked in their homes behind gates, after dark (and especially for many of our senior citizens who are involuntary prisoners afraid to walk the streets of our once safe borough). And—there is little happiness for those who want to enjoy the fruit of their labor.

We are all frustrated in our efforts to break the cycle of crime and injustice. We must, however, continue our pursuit to find some answers to these horrendous problems. I suggest that all of us, both in our public and private capacities, be first and foremost, citizens of courage, determination and deep conviction. We must be ready to struggle for honest and just values, regardless of the consequences. We must not yield to community pressure nor become instruments of political power groups.

After sitting for years on the Grand Jury, I have made certain observations, which I would like to share with you.

1. Innocent victims of crimes should enjoy the same constitutional rights and privileges that are given to the perpetrators.

2. We need a uniform Federal gun law, which would prohibit the sale of guns. Every time there has been a homicide, the perpetrator has had easy access to a weapon.

3. The Sullivan law should be rigidly enforced.

4. There seems to be an indiscriminate and flagrant amount of ball jumping. Ball should be set to guarantee the appearance of the defendant in court.

5. Ball should be revoked if a person is arrested for a felony while awaiting trial on another charge.

6. Ball should be denied if a person who is arrested for committing a felony has in his possession a shot gun, sawed-off shot gun, or a machine gun.

7. In felony narcotic cases, bail should be denied.

8. More emphasis should be placed upon the prevention of crime and upon the supervised parole and probation, rather than upon long jail sentences. To accomplish this, we need more qualified probation, parole and warrant officers.

9. Justice should be meted out in such a way as to have the greatest effect upon the defendant. His appearance in court must not become a revolving door.

10. Corroboration should not be necessary on a rape indictment, especially when children are the victims.

11. The facilities and the staff of the courts, and the D.A.'s office should be enlarged to meet the ever increasing volume of cases.

12. The fee of the Grand Juror should be sufficient so that no person who has the ability and desire to serve shall be denied the right for reasons of financial hardship.

Ladies and gentlemen, distinguished guests, you provide the hope to all New Yorkers who seek peace in their homes and safety in the streets. I hope that you will use your influence, when appropriation bills are being considered, both in the State Legislature and in the Congress, so that we can implement some of these ideas and improve all services. Let us all recognize that law leads to freedom and lawlessness to servitude. We are living on borrowed time, and the need for action is acute. Rousseau said "to live is not merely to breathe—it is to act".

I hope the father of all mankind will guide us in these troubled times so that we can cope with the many problems sweeping our community. Let us show compassion and understanding for those less fortunate than we are. Let us not talk brotherhood—let us be brothers. May life, liberty and the pursuit of happiness be once again the touchstone for every member of our community.

May I share with you a short story that sums up my sentiment?

There was an ancient philosopher who was challenged by a young man: "Tell me, old man, is the bird in the hand behind my back dead or alive?" And the man of wisdom replied, "The answer lies in your hand".

Ladies and gentlemen—the answer lies in our hands.

ANTHONY HENNINGER

HON. JAMES M. HANLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. HANLEY. Mr. Speaker, the role of a mayor in any of our American cities is indeed challenging and demanding. And, thank God, many of our more courageous citizens choose to "bite the bullet," and offer their talent, time, and dedication to the electorate as candidates for mayor of their respective cities. If the majority of the people are convinced of the candidates superior qualification, he is elected and as such assumes great challenge and responsibility.

I am sad to say that a man who met that challenge, a close friend of mine, died last Friday. He had spent his twilight years in retirement after rendering great service to his community.

I refer to the Honorable Anthony Henninger who served the city of Syracuse, N.Y., in truly exemplary fashion through the years 1957 to 1961. Mr. Henninger passed away on March 17, and his absence creates a real vacuum in my home community and certainly in the life of his wonderful wife, Susan, to whom I express my deep sympathy.

Mr. Henninger's life style is probably best expressed in the content of the following articles:

HE ENRICHED SYRACUSE

(By Joseph V. Ganley)

(Joseph V. Ganley who covers the Washington scene for The Herald-Journal, Herald-American, was city hall reporter in Syracuse for many years. Here he reminisces about Anthony A. Henninger, a mayor he came to know well in official and social circles and on the golf course as well.)

Former Mayor Anthony A. Henninger, who died yesterday in Crouse-Ingvar Memorial Hospital, came to Syracuse 50 years ago to shop for a transmission plant. He acquired an operation on Plum St., which later became the New Process Gear Co., and stayed to make Syracuse his home.

There is no doubt that the community has been a better place for his staying.

"Tony" Henninger was 80 at his death, but until his recent illness, he was one of the youngest men in town.

The results of that original purchase may be seen out on Fly Road where the modern New Process Gear plant operated by Chrysler Corp. is a testament to Mr. Henninger's industrial stewardship.

He served the city as mayor from 1958 through 1961 and the accomplishments of those years are all around us. Henninger High School on the East Side, named after him; Corcoran High on the West Side, named after another mayor, Thomas J. Corcoran; a couple of junior high schools, two or three elementary schools, the new airport at Hancock Field and the Lake Ontario water system, to name the major ones.

His public philanthropy is known. What is not so visible is the "secret" side of Tony Henninger—the side that dispensed financial aid to scores of young men for college education, and to old employees when they were in need.

Anthony Henninger's was a unique, many-sided personality. A strong character, carrying an imposing physical presence, he never lost his respect for his associates in those early days in the automotive business in Muncie, Ind., his birthplace, Toledo, Ohio, and Detroit.

Two of them, the famous Walter P. Chrysler and W. C. Durant, were never anything but "Mister" Chrysler and "Mister" Durant to Tony.

Many anecdotes could be told about Tony—he was one of the most generous persons around, yet would save pencil stubs and hated to lose a golf ball. He gave his \$20,000 salary quadrupled to charity when he ran city hall, yet he made a federal case out of saving soap and toilet tissue.

Few know that in his early days in Muncie, he peddled papers to earn money for his keep, and played piano and booked dance bands during his early youth. He played semi-pro baseball and loved the game all his life. He was a Yankee fan—he loved a winner.

There was nothing dull about Tony Henninger. Another unique character, the late Alexander F. "Casey" Jones caught the "flavor" of the mayor in an editorial in 1961 when Henninger was leaving city hall:

"If he pauses to look back on that old pile of drab colored stone, he will chuckle to himself and murmur: 'There was never a dull moment. Nice to have known you.'"

It was nice to have known you, too, Tony. And, with your beloved wife, Susan, we'll miss you.

ANTHONY HENNINGER CITED AS "MAN FOR ALL SEASONS"

(By Ramona B. Bowden)

A concelebrated Mass of Resurrection was conducted yesterday in St. John the Evangelist Roman Catholic Church for Anthony A. Henninger who died Friday.

Attending were leaders in the industrial, business, educational and sports world as well as former mayors, members of the judiciary, representatives of state and local government. With many friends and a long list of honorary bearers, they filled the large church to near capacity.

In the presence of the Most Rev. David F. Cunningham, bishop of the diocese, who offered the final prayers and gave the absolution, the Mass was concelebrated by the Rev. Msgr. Edgar M. Holihan, pastor, with the Very Rev. William L. Reilly, S.J., president of LeMoyne College, and the Rev. Robert F. Grewen, S.J., former president of LeMoyne. Assisting were Msgr. Richard Clark, Msgr. A. Robert Casey, the Rev. Charles Fahey, and the Rev. Francis J. Pier-son.

In his eulogy, Monsignor Holihan said, "With the idea of death, our world today seems to be involved with the finality of leaving here a question mark. But Christianity gives the answer. We know what it says, but we do not believe it. But Christ means exactly what He says 'I am the Resurrection, I am the life.'"

"Every individual here was born into this life as a pilgrim to pass through in the companionship of man and with God, so that God will call him to eternal companionship with Himself. The whole purpose of creation is to do the best we can to the glory of God and the good of souls including our own," said the priest.

"When you have a magnanimous spirit like Mr. Henninger and know we have various shades of generosity, we see the example of one who is leaving us and going to God. We've seen the example, the courage, the success, the concern for others, and we see ourselves as little people with small awareness of others," he said.

"Mrs. Henninger, priests, ministers, family and all your friends, we offer you our deepest sympathy, our continual prayers for his eternal rest and our prayers for comfort and strength for yourself," said Monsignor Holihan.

In deference to Mrs. Henninger who is a member of Park Central Presbyterian Church, the pastor, the Rev. Bradford N. Pusey, gave his tribute to Mr. Henninger who had been a generous benefactor to Park Church:

"He was an industrialist of imagination and success. He was a champion for education and a promoter of the best in competitive sports. He demonstrated that government for and by the people works. He crusaded for community health and cultural enrichment. To everything he touched he gave generously of his resources, time, energy, skill and wealth. But over-arching all he did and was, Anthony knew himself to be a child of God. There was no necessity to translate his faith into words; his daily life-style exhibited that the heart of Christianity was the Sermon on the Mount and the Golden Rule.

"If ever the city of Syracuse shall raise up 'a man for all seasons' must it not be for this faithful husband, courageous leader, generous benefactor, trusted friend and mentor in the ways and will of God, Anthony A. Henninger?" said Mr. Pusey.

ANTHONY A. HENNINGER

For almost 50 years, the name of Anthony A. Henninger has been in the forefront of scores of movements to help make Syracuse a better community in which to live.

The passing yesterday of the handsome, white-haired former mayor marked the end of a career in which Tony Henninger became known as an enlightened industrialist at the helm of the old New Process Gear plant, as an enthusiastic backer of baseball whose generosity and hard work helped bring Triple A competition back to MacArthur Stadium, as a benefactor and Regent of LeMoyne College, and as a hard working mayor who gave the city strong leadership.

It became a by-word that when Tony Henninger got behind a good project, it was bound to succeed. His enthusiasm inspired many others to join with him, and his public gifts to LeMoyne College, Syracuse University, to his church and to all good causes won him the admiration of thousands.

Less than five years ago he, a devout Catholic, and Mrs. Henninger, a Presbyterian, contributed \$80,000 to purchase a chancel organ for Park Central Presbyterian Church as a memorial to their son, Robert Anthony Henninger.

Syracuse University conferred on him in 1951 its highest award, an honorary doctor of laws degree. LeMoyne College, where he had established the Anthony A. Henninger Scholarship Fund, gave him its Salterae (Salt of the Earth) medal in 1968 in recognition of 20 years of service as a charter member of its Board of Regents and former chairman of its board.

He was pleased when the new East Side high school near Teal Avenue was designated the Anthony A. Henninger High School as one of five schools begun during his administration. At that time, then-Mayor William F. Walsh noted, "Nobody has been more dedicated to the children of this city than he."

When a member of the school's first graduating class presented Mr. Henninger a Class of 1965 ring, the former mayor mused, "The last time I received a ring was when I was married. I don't mind being married to Henninger High School."

CAMP FIRE GIRLS

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRASSO. Mr. Speaker, during the past 62 years, 4 million American women have participated in the Camp Fire Girls. The organization's emblem is, of course, a campfire, which symbolizes both the warmth of comradeship and the spirit

of the out of doors. Its motto reflects the Camp Fire Girls' worthy goals: "Worship God, seek beauty, give service, pursue knowledge, be trustworthy, hold on to health, glorify work, be happy."

At this time, we celebrate the anniversary of the founding of Camp Fire Girls by Dr. Luther Halsey Gulick. Over three generations, this organization has continued to grow and to have a positive influence on the daily lives of its members.

Our Nation has benefited from the good citizenship qualities exemplified by the dedicated leaders of the Camp Fire Girls. It was Dr. Gulick's conviction that because adolescence is such a critical period in the lives of young people, and because women are playing an increasingly important role in all aspects of society, an organization such as Camp Fire Girls is needed to provide young women an opportunity to develop to their full potential as community leaders and good citizens.

We are very grateful that Dr. Gulick was so successful in establishing such a program. For this reason, it gives me pleasure to salute the Camp Fire Girls—an organization that abounds in resourcefulness, energy, and imagination—on this important anniversary.

SEARCHING FOR CAUSE AND CURE OF COOLEY'S ANEMIA

HON. ROBERT N. GIAIMO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. GIAIMO. Mr. Speaker, the medical research community searching for the cause and cure of Cooley's anemia is large and growing, but desperately in need of Federal financial support.

Federal support would earmark Cooley's anemia as a particular priority for intra- and extra-mural programs of the National Institutes of Health, and continued support of the clinical research program of NIH will provide the subsidies to research facilities necessary to support study and service for patients with this and other mysterious but widespread diseases.

The high quality of existing medical research in this field—demonstrating the existence of a base of knowledge nearly ripe for practical application—has been shown in reviews of work on Cooley's anemia in the medical literature.

In 1966 and now on the March 16, 1972, issues of the New England Journal of Medicine, for example, review is made of research into the basic genetic and physiological causes of Cooley's anemia.

In 1964 and again in 1969 the New York Academy of Sciences and the Cooley's Anemia Blood and Research Foundation for Children jointly sponsored symposia on the problems of Cooley's anemia, resulting in the collection and publication of research papers totaling over 1,300 pages.

Much basic research has been done, therefore, with little or no Federal help. It is well known, however, that particular areas of medical research blossom when Federal direction and support are given; researchers in basic areas are

more able to direct their studies to practical ends, the clinical or applied part of medical research is enhanced within the institutions and organizations that conduct sophisticated medical research, results are more easily disseminated within the scientific community, avoiding duplicative work, and the work stimulated and supported by private foundations or general purpose research grants is brought to its fullest scientific and practical fruition.

Cooley's anemia is not unknown to medical research, Mr. Speaker, quite the opposite, but the practical help available to the physician or pediatrician who deals with Cooley's anemia is pitifully small. It is time to give national direction and support for this work, so that the patients and families affected by Cooley's anemia will benefit from the best our Nation's scientific and medical community has to offer.

H.R. 9615—IMMIGRATION VISAS

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mrs. GRASSO. Mr. Speaker, the passage by the House of H.R. 9615 is a welcome event in the lives of so many people. This bill creates additional immigration visas for a period of 4 years. It will do much to correct some of the injustices which resulted from the transformation of the immigration program from an earlier system based on national origin quotas to the present one of "first come, first served."

It was not so long ago that the system of national origin quotas led to the parting and long separation of families. While one member of the family might be able to come to America, others would be left at the docks—waiting for an opening in the restrictive quota system. Years would go by with fathers living far from sons; with sisters separated from brothers. Each year the list of requests for visas would grow; each year only a certain number from any one country would be granted. No provision in the old law would allow the unused visas of one country to be transferred to those in another country.

The Immigration and Nationality Act Amendments of 1965 eliminated the national origins quota system and provided for a certain period of transition to eliminate some of the backlog of previous visa requests.

But even this welcome legislation had its flaws. The case of the present fifth preference immigrant—the brothers and sisters of U.S. citizens—provides a prime example. When the old law was repealed, 158,696 individuals fit under this category. Because the terms of the old law were overly restrictive to Southern Europeans, Italy had the largest oversubscription. Its 114,717 registrants were more than two and a half times as large as the registrants of all the other countries of the world combined. Originally, a 5-year phaseout period for preferential admissions had been considered.

However, when this legislation became law, the final transition period for removing the backlog of preferential requests amounted to only 3 years. As a result, of all the countries of Europe, only Italy still retains a significant backlog of fifth preference requests for visas. Italian-Americans still wait for their brothers and sisters to join them in America. They still wait for the joy of seeing their brothers and sisters arrive to begin a new life.

The passage of H.R. 9615 will alleviate most of this backlog. Italy will receive over 28,000 of the nearly 40,000 additional visas created for the four-year life of this act. Families will be reunited. The long wait will then be over. Happiness and love will pour from grateful hearts.

In addition, the amendments of 1965 resulted in a type of reverse discrimination, as epitomized in the sharp curtailment of immigration from Northern Europe. Prospective immigrants from Great Britain, Ireland, and Germany have been unable to qualify under the new preference system. The new legislation passed by the House would help remove this distinct disadvantage through the formula of granting special visas to certain countries. Under the provisions of this legislation, Great Britain and Germany would receive the maximum total of 7500 visas annually. Ireland would receive 4096, while Poland would be entitled to 2970 visas annually for 4 years.

Mr. Speaker, the last vestiges of inequitable and discriminatory immigration system of the past must be removed. I was pleased to give my support to this legislation which passed the House, and hope that it will receive quick and favorable consideration in the Senate.

THE 100TH ANNIVERSARY OF OUR NATIONAL PARK SYSTEM

HON. GERALD R. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. GERALD R. FORD. Mr. Speaker, this month marks the 100th anniversary of our National Park system, which began with the creation of Yellowstone National Park in legislation enacted by the Congress and signed by President U. S. Grant. Yellowstone was not only the first National Park in the United States, but the first such wilderness recreational area set aside by any nation for the benefit of future generations, and it set an environmental example for the world a full century ago.

In an unusual full-page public service advertisement in the March 1 edition of the Wall Street Journal, Sunset magazine and Books of Menlo Park, Calif., tells the story of the inception of our National Park system and urges Americans to celebrate the centennial by visiting one or more of them this year. With signs of spring all around us, it is a message well worth heeding.

The text of the anniversary ad follows:

PEOPLE LAUGHED AT JOHN COLTER—HE CLAIMED TO HAVE SEEN GREAT SPOUTING GEYSERS NEAR THE YELLOWSTONE, NATURALLY, NOBODY BELIEVED IT IN 1807

John Colter wasn't looking for geysers. He was looking for beaver pelt. Having left the Lewis and Clark expedition, he was on his own, and a man has to make a living.

Somehow, on his trapping jaunts, he happened upon the bubbling potholes, craters, and geysers near the headwaters of the Yellowstone. But nobody believed his story (any more than they believed Jim Bridger 20 years later). After all, weren't frontiersmen noted for telling tall tales?

In fact, it was not until 1870—63 years after Colter's first sighting—that a survey party out of Montana verified, in spite of their own previous disbelief, that the phenomena of "Colter's Hell" actually existed.

Suddenly those unbelievable geysers had become reality—and the whole magnificence of Yellowstone a nation's opportunity.

TODAY IS AN IMPORTANT ANNIVERSARY

Just 100 years ago this very day, on March 1, 1872, an Act was signed into law by President Grant, setting aside two million acres of Yellowstone's splendor as a "pleasuring ground for the benefit and enjoyment of the people."

This was the world's first national park; the first time in history that a superlative natural resource had been set aside for purely aesthetic, emotional, and non-material satisfactions as a national park. Truly an environmental milestone.

And what an amazing chain reaction it started.

Since 1872, our National Parks have grown to include nearly 300 areas of natural, cultural, and historical significance in the American heritage. And vast new tracts of wilderness and reaction land are being added through a program which President Nixon has called The Legacy of the Parks.

The national park concept is also one of our most successful "exports." More than 100 nations have been inspired by our example to establish over 1,200 national parks and reserves of their own.

Think how all of these priceless treasures will be valued 100 years from now, just as we value our Yellowstone today.

WE'RE ALL INVITED TO THE BIRTHDAY PARTY

President Nixon has invited all of us in America, and all our good friends beyond our borders, to join in celebrating the 100th birthday of our National Parks.

The invitation is issued in the form of a Presidential Proclamation, designating 1972 as National Park Centennial Year.

So how does one participate?

The folks at Sunset Magazine and Books, being by nature do-it-yourself advocates, think the best way to celebrate this national birthday party is to go and visit a National Park. Or, better still, several.

It's the kind of party in which the guests have all the fun.

Why don't you go? You won't have to travel far, if you don't wish to, because these shrines of heritage are all around us. Or, if you're willing to journey a bit further, visit one of the fabled places you've heard about all your life, but have just been putting off until "someday."

It's a wonderful way for families to explore the richness of their country together.

While some parks are heavily populated on big holiday week-ends, their reasonably long seasons afford you plenty of other time choices. (Several parks have all-year accommodations and camping facilities.)

Some of your most rewarding experiences, by the way, will be the explorations you can make on foot, away from roads and beaten paths.

Hopefully, your visits will inspire you, as it has us at Sunset, to support the addition of more such worthwhile areas. To meet the expanding needs for human enrichment in the next century of parks, millions of Americans and their government representatives must make an all-out commitment to work together for more parks and wilderness areas.

And, if, perchance, you find yourself where it all began at Yellowstone, just quietly tip your hat to the same patriarchal geyser John Colter saw, and say, "Happy Birthday, Old Faithful."

WHY IS SUNSET SO INTERESTED?

Sunset Magazine and Books are part and parcel of Western America, where, by good fortune, nature has located a vast number of the most spectacular areas in the National Park System.

From Alaska's Mount McKinley to New Mexico's Carlsbad Caverns, Colorado's Rocky Mountain to Hawaii's Haleakala, we Westerners are blessed with an abundance of National Parks.

Because travel and exploration are important aspects of Sunset's service to its readers, our editors have become recognized authorities on the lore of National Park areas in Western America.

This goes back to 1898, when the maiden

issue of Sunset Magazine had a National Park, Yosemite, as its feature article.

Since then, literally thousands of pages in Sunset publications have been devoted to helping people derive enjoyment from their National Park experiences.

Why is Sunset so interested? Because we believe that the existence and influence of National Parks are among the most precious of American legacies—and that the dedicated people of the National Park Service make a matchless contribution to world communion.

That is why we invite you to share in cherishing, preserving, and enjoying these wonderful manifestations of man's best wisdom.

And why we have sponsored this anniversary day message.

HOUSE OF REPRESENTATIVES—Thursday, March 23, 1972

The House met at 12 o'clock noon. The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Our help is in the name of the Lord, who made heaven and earth.—Psalms 124: 8.

Our Father God, who art the life within our souls, the law within our minds, and the love which warms our hearts, direct us with Thy most gracious favor and further us with Thy continual help that this day may be a great day because Thou art with us and we are with Thee.

In the haste and hurry of a swiftly moving age may we be strengthened by Thy spirit to live by the light of love, to walk in wise ways and to serve our country faithfully with high honor.

Most heartily do we pray that Thou wilt bless our President, our Speaker, and Members of Congress. Grant unto them courage, faith, and wisdom, and so rule their hearts and direct their endeavors that justice, peace, and good will may everywhere begin to prevail: To the honor and glory of Thy holy name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following titles:

H.J. Res. 208. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1426. An act to establish the Van Buren Historic Site at Kinderhook, N.Y., and for other purposes;

S. 3129. An act to authorize the establishment of the Longfellow National Historic Site in Cambridge, Mass., and for other purposes; and

S. 3166. An act to amend the Small Business Act.

The message also announced that the Vice President, pursuant to Public Law 84-1028, appointed Mr. HATFIELD as a member of the Board of Visitors to the U.S. Military Academy in lieu of Mr. YOUNG, excused.

EQUAL RIGHTS FOR WOMEN

(Mrs. GRIFFITHS asked and was given permission to address the House for 1 minute.)

Mrs. GRIFFITHS. Mr. Speaker, not only do I want to thank all of you and all of the Senate for this day, making it possible for women to be considered as human beings under the Constitution, but also I wear these flowers today to celebrate the fact that Hawaii is the first State to ratify the equal rights amendment.

CALL OF THE HOUSE

Mr. KYL. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. BOGGS. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 88]

Abourezk	Eckardt	Murphy, N.Y.
Alexander	Edwards, La.	Nelsen
Anderson, Ill.	Eshleman	O'Hara
Ashbrook	Foley	Pelly
Ashley	Ford	Pryor, Ark.
Badillo	William D.	Fucinski
Baring	Forsythe	Rangel
Belcher	Fulton	Rees
Brooks	Fuqua	Riegle
Buchanan	Gallfanakis	Rosenthal
Camp	Gallagher	Rostenkowski
Carey, N.Y.	Gaydos	Saylor
Celler	Gray	Scheuer
Chamberlain	Hagan	Shoup
Chappell	Halpern	Springer
Chisholm	Hastings	Staggers
Clark	Hawkins	Stanton
Clay	Hébert	James V.
Collins, Ill.	Hull	Stokes
Conyers	Johnson, Pa.	Stubblefield
Davis, Wis.	Jones, N.C.	Teague, Calif.
de la Garza	Kemp	Teague, Tex.
Dellums	Kyros	Wampler
Dent	Landrum	Yates
Diggs	McKinney	Yatron
Dorn	Metcalfe	Zablocki
Dowdy	Mikva	
Dwyer	Mitchell	

The SPEAKER. On this rollcall 351 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

PERMISSION FOR COMMITTEE ON RULES TO FILE CERTAIN PRIVILEGED REPORTS UNTIL MIDNIGHT TOMORROW

Mr. COLMER. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tomorrow night to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

FORTY-FOUR DAYS AND STILL NO WORD FROM PRESIDENT NIXON ON TAX REFORM

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SEIBERLING. Mr. Speaker, 44 days ago our esteemed colleague and chairman of the House Ways and Means Committee, WILBUR MILLS, wrote to President Nixon requesting him to submit to the Congress a plan for tax reform. The chairman asked that the President submit his proposals by March 15 in order for Congress to have time to act on them in this session. It is March 23, and nothing has emerged from the Nixon administration except silence.

Perhaps this silence is an indication that the administration believes the issue of income tax reform is a passing fad, drummed up by the media. It is not. When it is public knowledge that because of special tax loopholes more than 1,300 people with incomes in excess of \$50,000 paid no taxes in 1970, the issue of tax reform will not go away. When the public knows that because of the oil depletion allowance, our 19 largest oil corporations pay a smaller percentage of their combined net earnings in taxes—less than 9 percent of \$9 billion in 1970—than the worker who earns \$9,000 a year, the issue of tax reform will not go away. When our largest steel firm, with net earnings of \$154 million, can boast in a report to